

Oct 29

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THE NEW

Natura Brevium

OF THE

Most Reverend JUDGE

Mr. ANTHONY FITZ HERBERT.

TO WH

A C O M M E N T A R Y,

Supposed to be written by the late

LORD CHIEF JUSTICE HALE.

THE NINTH EDITION,

Collated with former Editions, and corrected; some NOTES and
REFERENCES added; and the INDEX considerably enlarged.

IN TWO VOLUMES.

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FITZ-HERBERT,

HIS

Natura Brevium.

Writ of Detinue.

A writ of *detinue** lieth, in case, where a man delivereth goods or chattels unto another to keep, and afterwards he will not deliver them back again; then he shall have an action of *detinue* of those goods and chattels; and so if a man deliver goods or money put up in (c) bags, or in a chest, or in a cupboard, unto another to keep, and he will not redeliver the goods or the money in the bags; he

[138]

13 Ed. 3.
Detinue 55.
9 H. 6. 58.

* Detinue and debt may perhaps be considered as identically the same in all their properties, process, circumstances, and form, with the difference, that one was for the recovery of a chattel, the other of mo-

(c) See 29 Ed. 3. 20. accordant, detinue lies for a bag and one hundred pounds *in eadem бага*, without saying that it was ensealed; adjudged 18 H. 6. 20

And Note; If detinue be brought of a chest ensealed with charters, there, for that the court cannot be apprised by the writ, whether they concern the realty or not, process shall be made by *capias*, &c. but when the party

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ney. 3 Reeves' Hist. 67. Debt lieth in some cases for a chattel. Supra 119. I. See a precedent of a modern declaration in detinue. 3 Wooddes's System. View, 106.

appears, and counts, whereby it appears to the court, that the charters do concern the realty, then he shall be permitted to appear by attorney, &c. 29 Ed. 3. 19. 7 H. 4. 2. and 21 H. 6. 42. acc. with this diversity. See 8 H. 6. 30. If one bring detinue of a chest with charters, he ought to count that the chest was locked, for otherwise he shall have a general writ of charters. 39 Ed. 3. 7. contr.

B

14 H.

If a man bail a thing to bail to I. S. he shall have detinue, by Priſot, yet he hath no property till agreement,

39 H. 6. 44.

La ton, contr.—

7 H. 4. 13.

Detinue was brought of a bag with twenty pounds, And by Martin,

4 H. 6. 1 and 2.

If a man bail twenty pounds

to rebail, detinue

lieth and accompt.

he to whom they should be delivered shall have a writ of *detinue* for those goods, &c. But if a man deliver money not in any bag or chest, to redeliver back, or to deliver over unto a stranger; now he to whom the money should be delivered, shall not have an action of *detinue* for the money, but a writ of account; because *detinue* ought to be of a thing which is certain; as of money in bags, or of a horse, or of a hundred cows, or such certain things. And this writ may be *vicontiel*, and shall be sued before the sheriff in the county if the plaintiff please; or he may sue it in the common pleas; and the form of the writ in the common pleas is,

B

to him
not

Contra, if it were, per accompt rendre. 6 Ed. 4. 11. Detinue of four quarters of barley, and doth not say in sacks; and yet good.

Note, that in

21 H. 6. 29.

the writ was

reddat bona

& catalla; and

declare. of three

deeds; contr.

if of 3 obliga-

tions. 19 Ed. 3.

Detinue 49. The

writ was

unam chartam,

and the count of

a confirmation.

The king to the sheriff, &c. command A. &c. that &c. he render to B. one charter which he unjustly detains from him, as he saith, and unless, &c. Or thus, that he render to B. one box with three writings obligatory, signed under the seal of the aforesaid B. contained in the same box. And the rule in the register is, that in the writ de chartis reddendis, the certain number of charters or writings ought to be put. And a man may have a writ of detinue of one writing, and the writ shall be, command A. that, &c. he render to B. a certain writing by which B. hath given and granted all his goods and chattels, lately being in the manor of N. to I. of L. which he unjustly detains from him, &c. And the form of the writ in the county is such: The king to the sheriff, &c. We command you, that you justice A. that justly, &c. he render to B. one charter, or three charters, or one writing (a) obligatory

14 H. 4. 30. and then if it be not a chest locked, he ought to shew what charters specially. 11 H. 6. 9, 49. 14 H. 6. 4. See 14 H. 6. 1. the defendant came in by exigent, the plaintiff counts of a chest with charters, and

of one charter in special; the defendant pleads to the charter *non detinet*, and to the residue wages his law instantly, and then was permitted to make an attorney.

(a) Note; The writ may be *bona & catalla*, and he may count of three talies; but if he counts of an obli-

gation, the writ ought to be special, 21 H. 6. 29.

or of covenant, or acquittance or testament, or writing, which he unjustly detains from him, as he saith, as he can reasonably shew that he ought to render the same to him, that we may hear no more clamour, &c.

- C And if a man sue in any court a plaint of *detinue* for any charters which touch and concern freehold, if it be not in the common pleas by the king's writ, the defendant may sue a prohibition, to prohibit them, &c. and to surcease, &c.

The king to the bailiff of I. of R. greeting: whereas pleas of *detinue* of charters or writings touching freehold ought not to be pleaded without our writ in any courts which have no record, according to the law and custom of our realm, and W. without our writ impleadeth B. before you in the court of your lord aforesaid of R. for that, "that he the said B. render to the aforesaid W. three charters," as we have received information; we command you, if it be so, that then you do absolutely supersede that plea from being further holden before you in the court aforesaid without our writ, and that you tell the aforesaid W. on our behalf that he may obtain for himself our writ of *detinue* of the charters aforesaid against the said B. if it shall seem to him expedient. Witness, &c.

- D And the plea may be removed by *pone* out of the county at the plaintiff's suit, without cause shewed in the writ; and at the suit of the defendant he ought to shew cause in the *pone*: and this clause shall be in the end of the writ, *let execution of this writ be done, if the cause be true, otherwise not, &c.* Supra 128.
Q. 70. B.

- E And if a man find my goods which I have lost, I may have a writ of *detinue* of them. 38 H. 6. 24.
25 Litt.

- F And if a man give lands in tail by deed indented, and the donee die without heir, the donor shall have a writ of *detinue* for that part of the deed indented which the donee had. 18 Ed. 3. *Detinue* 48. 31 H. 6. 13. 6 H. 7. 3. 39 H. 6. 24.
9 Ed. 4. 52.

And so if lands be given to two men and the heirs of one of them; if the tenant for life die, he who hath the fee shall have a writ of *detinue* for that deed.

7 Ed. 4. 20, 26.
Moiety.

18 Ed. 4. 14.
the feoffee shall
not have this
this writ against
a stranger.

10 Ed. 4. 9.

4 H. 7. 10.

9 Ed. 4. 52.

9 H. 6. 58.

The heir ought
to make title to
the land, other-
wise the execu-
tors shall have
them.

39 H. 6. 41.
acc.

9 Ed. 4. 52.

9 H. 6. 15.

10 Ed. 4. 9.

39 Ed. 3.

Br. chart. 38.

10 Ed. 4. 9.

10 Ed. 4. 14.

The Lord by es-
cheat shall have
detinue for char-
ters.

(a) If a man make a feoffment in fee of his land by deed, yet the feoffee shall not have the charters concerning the land, but the feoffor shall keep them, if he do not give them to the feoffee; but against a stranger the feoffee shall have an action of *detinue* for those charters which concern the lands, if he cannot make title by the feoffor, or those who claim title by the feoffor.

And the heir in tail shall have a writ of *detinue* against the discontinuer for the deed of entail by which the land was given. 18 Ed. 4. 15. 44 Ed. 3. 1. 10 Ed. 4. 9.

And if a man maketh a feoffment in fee of the land which is fee-simple, his heir shall have the charters which concern the same lands, and not the executors of the father. 9 Ed. 4. 53. 10 Ed. 4. 9.

If a man make a lease for years, and afterwards confirm his estate in fee, the heir of the feoffee shall have the deed of the lessor for years, as well as the deed of confirmation, because that the deed doth make the confirmation good: and so of every deed which maketh his title, or a release, or the like, without which his title would not be sure, he shall have an action of *detinue* for them. 9 Ed. 4. 53.

And the heir shall have a *detinue* of charters, although he hath not the land; as if I be infeoffed with warranty, and I infeoff another with a warranty in fee, my heir shall have a *detinue* of that deed by which I am infeoffed, because he may have advantage of the warranty. 9 Ed. 4. 53.

And if my father be disseised, and die, I shall have a *detinue* for the charters, although I have not the land, and the executors shall not have the action for them.

And if a man have goods delivered to him to deliver over to another, and afterwards a writ of *detinue* be brought

(a) See one parcener may have the charters which concern her purparty only, and shall have *detinue* thereof against her sister on a special count. See also in *detinue* of charters by two, if the defendant delivers

them to one of them, though out of court, he shall be excused against the other, and so in dower against two, who plead *detinue* of charters. 21 Ed. 3. 8. per Manby.

against

39 431
12 Aug 12 713

against him by him who hath right unto the goods; now if the defendant, depending the action, deliver the goods over to whom they were bailed to him to deliver, the same is a good bar in the action, because he hath delivered them according to the bailment made unto him.

S. P.
Bac. Abridg.
Bailment, D.
Roll Abrid.
607.

And after divorce made betwixt the husband and the wife, the wife shall have a writ of *detinue* for the goods given with her in *frank marriage*, which see *M. 35 Ed. 1.* And the process in *detinue* is summons, attachment and distress.

For detinue 61.
13 H. 3.
Prohibition 21.
See 44 C.
O. N. B. 40. b.
41. a.
3 Reeves' Hist.
66.

Writ de Recto de Custodia Terræ & Hæredis.

B THE writ *de custodia terræ & hæredis* lieth where the tenant holdeth of his lord by knight's service, and dieth in his homage, and a stranger entereth into the land, and taketh the body of the heir: the lord of whom he holdeth the land shall have a writ of *custodia terræ & hæredis*; and the writ is such (a):

Whoever may have this writ, it seemeth, may have a writ of escheat. *Infra* 144. C.

C The king to the sheriff, &c. Command A. that, &c. he render to B. the wardship of the land and heir of C. which belongs to him the said B. for that the *aforsaid* C. held his land of him by knight's service, as he saith, &c. and unless, &c.

(b) Otherwise of the heir of the land. Command A. that, &c. he render to B. and C. his wife, W. the son and heir

(a) And note; This writ lies against a guardian by nurture, or the grantee of a ward at will. See 24 *Ed. 3.* 96. Yet it does not lie against the grantee of a ward for years, if it be not he who first abates, 28 *Ed. 3.* 96. it lies against him who claims as bailiff, 38 *Ed. 3.* 18. it lies against a guardian for nurture, in case there is not any guardian in chivalry; but if one seized as guardian in chivalry, grants him, (*i. e.* the ward) over to B. to be nurtured, it does not lie against

B. 12 H. 4. 19. Non-tenure of the body is a good plea in a writ of ward of the body. 10 H. 6 12.

(b) Note; This writ ought to be brought where the lands lie, 29 *Ed. 3.* 3. and if the defendant has nothing in the same county, the plaintiff shall have a *disfringas* (after a *testatum*) into any other county, and non-age of the heir shall not be interred in the writ, but in the count, 12 H. 4. 16. &c. and if the heir comes of age pending the writ, or dies, yet the

heir of E. the wardship of whom belongs to them the said B. and C. for that the aforesaid E. held his land of the aforesaid C. &c. Or thus, Of L. the father of the aforesaid C. whose heir she is, by knight's service, as it is said, &c. and unless, &c.

And a writ of the lands (c) only is such: Command A. that, &c. he render to B. the wardship of one yard-land with the appurtenances in R. which belongs to him, for that C. held that land of him by knight's service, as it is said, &c. or thus, which belongs to him the said B. by reason of a demise which A. (of whom the aforesaid C. held that land by knight's service) made thereof to him the said B. as he saith, &c.

And if a man have a wardship by reason of a ward, D and it be taken from him, the writ shall be thus: That he render to B. I. the son and heir of C. the wardship of whom belongs to him by reason of the wardship of the land and heir of R. (of whom the aforesaid C. held that land by knight's service) being in the custody of him the said B. as he saith, &c.

(a) And if the lord paramount will sue a writ of right E of ward for the services and rent, and the heir of the mesne, he may have a general writ of the land and heir, if he will, or a special writ thus:

writ shall not abate, *Quære.* 40 Ed. 3. *Brief* 776. 34 Ed. 1. *Brief* 853. 9 Ed. 4. 50. 40 Ed. 3. 7. 21 Ed. 3. 42. 15 Ed. 3. *Brief* 680. *Perk.* 13.

(c) *Note*; A writ of ward of lands for several parcels of several tenures shall abate, by *Rolf*; for he ought to have several writs, 3 H. 6. 53. *contra* in a writ of ward of the body, or of the lands; adjudged, *Ibid.* But if it be for the land, and also for the body, and the count is of several tenures, the writ shall abate. 46 Ed. 3. *Brief* 619. 17 H. 6. *Guard* 117. 6 Ed. 4. 48.

Note; The writ is general, and therefore the plaintiff may abridge his demand. 14 H. 6. 3.

(a) *Note*; And see 13 Ed. 3. *Guard.* 38. 19 Ed. 3. *Guard* 40. 1 H. 4. 2. 11 H. 4. 82. 8 Ed. 3. 8. Ejectment, intrusion or right of ward brought, supposing that he held the rent of him, and good. See 22 Ed. 3. 10. he may have a writ *de custodia terræ & hæredis*, and count of the land and rent, &c. See 10 H. 6. 12. a supposal (or demand) of rent held good; for by *Baldw.* If the king grants a rent-charge to B. to be held of him, and after grants the services to C. now B. holds the rent of C. See 14 H. 6. 24.

See a general writ for the wardship of the heir of *cestuy que use*, and a special count, *Dyer* 84. a.

Command A. that, &c. he render to B. the wardship of ten shillings rent, and of the heir of C. which belongs to him, for that the aforesaid C. held of him the tenement from whence that rent issueth, by knight's service, as he saith, &c.

F And this writ may be sued in the county before the sheriff by a justices, and then the writ is such :

We command you, that you justice A. that, &c. he render to B. the wardship of the land and heir of C. which, &c. as he saith, as he can reasonably, &c.

G And the plaintiff may remove the same by a pone without cause shewed, and the defendant ought to shew cause in the pone, as he shall do in a *Replevin*. 11 H. 2. *Gard.* 141. Supra 123. D.

H And it appeareth by the Register, that the guardian in socage shall have the writ of right of ward of the heir alone, or of the land alone, or of both ; for the heir thus : Infra I.

The king, &c. Command A. that, &c. he render to B. W. the son and heir of C. the wardship of whom belongs to him the said B. for that the aforesaid C. held his land in socage, and the aforesaid B. is next heir of him the said C. as he saith, &c.

And there is the like writ for the land. And the reason and cause that he shall have this writ seemeth to be, because that for the land he cannot have other remedy, if he cannot enter into the land : and yet I conceive that guardian in socage shall have a writ of right of ward for the land, because he is accountable unto the heir for the same, which proves he hath no right unto the land, but as bailiff. Infra I.

And the guardian in socage shall have a writ of ward for cause of wardship, where his guardian ought to have another infant in ward, because he is next of blood unto him to whom the inheritance cannot descend ; and the writ is such :

The king, &c. Command A. that, &c. he render to B. the wardship of the land and heir of C. which belongs to him the said B. by reason of the wardship of I. the son and heir of D. (who held his land in socage) being in the hand of him the said B. for that the aforesaid C. held his land in socage, and the

aforesaid B. is next heir of him the said I. as he saith, and unless, &c.

1 Ed. 3. 20.
26 Ed. 3. 65.
2 Ed. 3. 52.
17 R. 2.
Brief 634.
N B. 95.
3 Ed. 2.
Gard 133.

(a) And it seemeth, that a writ of right, *de communi custodia*, was at the common law, and as well for guardian in focage for the body of the heir, as for guardian in knight's service. But the writ of ravishment of ward was not at the common law for the guardian in knight's service, but the same was given by the statute of *Westm. 2. cap. 35*. And by the equity of that statute guardian in focage shall have a writ of ravishment of ward as well as guardian by knight's service; and by the same reason he shall have a writ of right of ward at the common law, as guardian in focage shall have.

12 R. 3.
Gard 106.

And if the mesne hath two daughters, one within age, K and the other of full age, and dieth; and the lord hath the wardship of her within age, and afterwards the tenant dieth, his heir within age, now the lord paramount, and the sister of full age who is one of the mesnes, shall have a writ of right of ward in this form:

Command A. &c. that, &c. he render to B. one of the daughters and heirs of W. and to P. of E. the wardship of the land and heir of R. which belongs to them the said B. and P. for that the aforesaid R. held his land by knight's service of the aforesaid B. and of M. the sister of the said B. the other daughter and heir of him the said W. within age, and being in the wardship of the aforesaid P. as they say, and unless, &c.

11 H. 4. 64,
65. 1st the
ejectment of
ward be brought
of land only.

the party must shew the certainty of the land; but if it be of the body and land, the writ general, *de terris & hæred.* is good. 22 Eliz. Dyer 292. It lieth not but of land only.

And it appeareth in the Register, that the writ *de ejectione L custodia* lieth for the land, and for the heir together, for the writ is such (b):

[140] *The king to the sheriff, &c. If A. shall make you secure, If he who ejects &c. then summon, &c. B. to shew wherefore, whereas the alien to another, yet he may have this writ against him who ejected him, and yet the party shall recover land to his writ, 12 H. 4. 10 by Hankford; so if one eject the ejector, he who was first ejected shall not have this writ, no more than one shall have trespass, &c. against the second trespassor. 39 Aff. 2.*

(a) And he shall account to the heir for the damages which he recovers, and for that the deforfeor shall

be discharged against the heir. 27 Ed. 3. 79. See *Keiw.* 131.

(b) See the contrary adjudged, 14 Ed. 3. *Brief* 316.

custody

custody of the land and heir of C. until the lawful age of the heir aforesaid belongs to him the said A. for that the said C. held his land of him by knight's service (c), and he the said A. was a long while in peaceable seisin of the same wardship, the aforesaid B. forcibly ejected him the said A. from that wardship, the said heir being within age, as he saith: and have there the summoners and this writ, &c.

- A** (a) Another writ for the land only, where he hath the same by grant of the guardian, thus:

The king to the sheriff, &c. If A. shall make you secure, &c. then summon, &c. wherefore, whereas the wardship of one yard-land with the appurtenances in D. until the lawful age of I. son and heir of C. belongs to him the said A. by reason of the demise which R. of whom the aforesaid C. held his land by knight's service, made thereof to him the said A. as it is said, and the said A. was a long while in full and peaceable seisin of the same wardship, he the said B. forcibly ejected the said A. from the wardship aforesaid, the aforesaid heir being within age, as he saith, &c. (b)

- B** Another writ when a man hath a ward of the king's grant, and he granteth the same over unto another, then thus, as above:

By reason of the demise which C. (who had that wardship of the commission of the lord Edward lately king of England, our predecessor, of whom the aforesaid R. held his land by knight's service) made thereof to him the said B. &c. and the said B. &c. Or thus: If E. shall make you secure, &c. then summon B. as well to answer (c) us as the aforesaid E. &c. where-

(c) Yet it is not sufficient for the defendant to traverse the tenure, &c. without shewing cause of justification. 10 H. 6. 20. *per Passon.*

Note; If the bailiff of A. ejects B. to the use of A. and afterward A. agrees and takes the profits and aliens, he shall be said the ejector, and ejectment *de Gard* lies against him, and the plaintiff shall recover the ward and his damages. 38 Ed. 3. 18. Ejectment *de Gard* brought against two, the death of the one shall not abate the writ. 12 H. 4. 10. The tenant

of the ward ought to be named in the writ. 2 Ed. 2. 779. *Quere.*

(a) *Note;* The writ *de custod. terræ & hæredis* is general, but *de custod. terræ tantum* is special. 11 H. 4. 64.

(b) *Et blada sua cepit, &c.* abated the writ, because it included trespass. 11 Ed. 3. *Brief* 471.

(c) He shall have a general ejectment of ward, and not a special writ on the case, which concludes *in contemptum nostrum, &c.* and such a writ shall abate. 11 H. 4. 65.

fore,

fore, whereas we committed to the aforesaid E. the wardship of the lands and tenements which were I.'s of C. deceased, who held of us in chief, and which were in our hand by reason of the minority of P. cousin and heir of the aforesaid I. to have the same with all things belonging to that wardship, until the lawful age of the aforesaid heir, and he the said E. was a long while in full and peaceable seisin of the said wardship by reason of our said commission, he the said B. (the said heir being within age) forcibly ejected the said E. from the wardship of one hundred shillings rent with the appurtenances in H. as he saith, &c.

13 H. 4. 17.

(d) And the guardian in socage shall have a writ *de ejectione custodiæ*, as appeareth by the Register; and by the like reason, as well as he shall have a writ of ravishment of ward for the body, he shall have a writ of ejection of ward for the land (e).

And if a man have the patronage of an abbey or priory, D and have right to have the temporalities during the time of vacation of them, if he have the possession thereof, and be ousted, he shall have a writ *de ejectione custodiæ*; and the writ shall be such:

To shew wherefore, whereas the custody of the priory of B. in the vacations of the same priory belongs to him the said A. and he the said A. was a long while in full and peaceable seisin of the said custody in the last vacation of the said priory, the aforesaid B. forcibly ejected the said A. from that custody.

And by the Register it is said, that the writ of right may be sued *de custodia priorat'* in time of vacation, &c. thus:

The king, &c. Command, &c. that, &c. he render to B. the custody of the priory of N. &c.

(a) And that is grounded upon the statute of *Magna Charta*, cap. 6. *Quod omnes patroni abbatiarum*, &c.

(d) And so is 26 Ed. 3. 65. 13 H. 4. 17. and note; it is there held to be no issue, to say that the ancestor did not hold of him whom the plaintiff supposes to be lord.

(e) See *contra* 16 Ed. 3. *Wast* 100.

(a) See that a writ of trespass for a ward was at common law, and at this day, it is in the plaintiff's election to pursue the statute or the common law, as by a writ of *oyer and terminer*. 29 Ed. 3. 37. adjudged. See 29 Aff. 35.

E And there is another writ of ward for the body, which is called a *writ of ravishment of ward*; and that writ lieth as well for guardian in socage, as for guardian in knight's service.

And if a man have one in ward, because his ancestor held of him by knight's service, and the ward is ravished and taken from him, he shall have the writ of ravishment of ward.

F (b) And so shall the grantee of the ward, or his executors, if he be taken from them; and the form of the writ for the lord of whom the ancestor of the ward held, is such:

The king to the sheriff, &c. If A. shall make you secure, &c. then put, &c. B. that he be before our justices, &c. or before us (such a day) wheresoever, &c. to shew wherefore he ravished and carried away I. the son and heir of C. found at N. being under age, the marriage of whom belongs to him the said A. against the will of him the said A. and against our (c) peace; and in the mean time do you diligently inquire where he the heir be in your bailiwick, and take him wheresoever he shall be found, and keep him safely and securely, so that you may have him before our justices, or thus, before us, &c. at the aforesaid time, to be restored to which of them the said A. and B. he ought to be restored: and have, &c.

(d) And if the heir be ravished and carried from county to county, then the writ shall be thus:

The king to the sheriff, &c. A. hath complained to us, that B. hath ravished C. the son and heir of L. being under age, and being in his wardship at E. in the county of Lincoln, and hath carried him from that county unto I. in your county, against the

(b) *Note*; In ravishment of ward, the defendant may traverse, but not without making a title in himself, when put out of possession. See 9 H. 6. 10. 61. otherwise if he pleads only to writ without saying, *Et in custodia sua existens*. 9 H. 6. 6.

(c) Without saying *vi & armis*, i. e. if the writ be *cujus maritagium ad ipsum pertinet ratione dimissionis*; contra

if it be according to the statute, there the writ is good. 17 Ed. 3. Brief 823.

(d) So *note*; The original writ ought to be brought in the county where the ravishment is supposed, and not in the county to which he is effoigned, and this writ shall issue to the sheriff. Dyer 289. Fitzb. Case; see the Stat.

will

will of him the said A. and against our peace: and therefore we command you, that you take the said heir wheresoever you shall find him in your bailiwick, and keep him safely and securely, so that you may have him before our justices at, &c. (such a day) which day the said A. hath, against the said B. to be restored to whom of right he ought to be restored: and have, &c.

And the form of the writ for the guardian in socage is thus: G

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The king, &c. If A. shall make you secure, &c. then put, &c. B. &c. to shew wherefore, whereas the wardship of the land and heir of C. until the lawful age of him the said heir, belongs to him the said A. because that the aforesaid C. held his land (e) in socage, and the aforesaid A. is nearer to the heir of him the said C. and he the said A. was a long time in full, &c. with force and arms he took and carried away the aforesaid W. B. the son and heir of the aforesaid C. found at N. being under age, and in the wardship of him the said A. and other wrongs to him did, to the great damage of him the said A. and against our peace: and have there the names of the pledges and this writ. Witness, &c. Or thus: with force and arms ravished, and hath married him without the licence and will of him the said A. to the great damage, &c.

And if the infant be in the custody of the lord, and A during his nonage he enter upon the lord, and oust him of the land which he ought to have in ward, then the lord shall have a writ of intrusion of ward against him; and the writ shall be such:

The king to the sheriff, &c. If A. shall make you secure, B &c. then summon, &c. I. the son and heir of C. to shew wherefore, whereas the wardship until the lawful age of the aforesaid heir belongs to him the said A. by reason of a demise which L. of whom the aforesaid C. held his land by knight's service, thereof made to the aforesaid A. and whereof A. was in full and peaceable seisin, the aforesaid I. being under age, intruded himself into the land aforesaid, and detains from the aforesaid A.

(e) Without saying *cujus maritagium ad ipsum pertinet*, as 7 R. 2. Brief 634. and yet if he be married by the ravisher, there shall be a recovery of

the value, and he shall be accountable to the heir for the same. 26 Ed. 3. 65.

that wardship, to the great damage and grievance of him the said A. &c. as he saith, &c. And have, &c. Or thus: To shew wherefore, whereas the wardship of the manor of T. with the appurtenances, until the lawful age of the aforesaid I. did belong to him the said A. by reason of a demise which B. (to whom H. of whom, and Alice his wife, the aforesaid C. held that manor by knight's service) made thereof to the aforesaid A. &c. and the said A. being in full, &c. the aforesaid I. while he was under age, intruded himself into the manor aforesaid, and hath hitherto detained from the aforesaid A. that wardship, to his damage, as he saith: and have, &c.

C And this writ lieth where the tenant holdeth of a man and his wife by knight's service in the right of the wife, and the tenant dieth, his heir within age, and the husband granteth the wardship of the land unto another, who granteth it over to another, upon whom the heir intrudeth, &c.

D And if the lord have the custody of the heir within age, and tender him a convenient marriage, and he refuse it, and intrude, then the lord shall have a writ against him to recover the (a) value of the marriage, and also to recover the land, which shall be such:

2 H. 7. 9.
31 Aff. 26.
Br. Affise 321.

The king to the sheriff, &c. If A. shall make you secure, &c. then summon, &c. B. &c. to shew wherefore, whereas the marriage of the aforesaid B. belongs to him the said A. for that the aforesaid B. held his land of him by knight's service, and he the said A. oftentimes tendered to the aforesaid B. while he was under age in his wardship, a competent marriage without disparagement, according to the form of the statute thereof provided by the common council of our realm, he the said B. refusing that marriage (the aforesaid A. not being satisfied for his

Vide 3 Eliz.
Dyer 235. the
tender traversed.

(a) The successor brought such a writ, supposing the tenure of a tender by an intrusion in the time of his predecessor, without any agreement, &c. with the abbot himself that was plaintiff; and ruled good, *per Cur.* 11 H. 4. 82. But note; It seems better if the writ supposes that no agreement

was made with him or his predecessor.

And note; One may have an ejectment of ward against the heir himself. 32 Ed. 3. Brief 347. *Quære Bro. Jurisdic.* 23. 11 H. 7. 9. and 31 Aff. pl. 25. contra 7 H. 6. 12. 21 Ed. 4. 43.

mar.

marriage) hath intruded himself into the lands and tenements, and for his marriage denies, &c. to the great damage, &c.

24 H. 3.
Ward 149.

And it appeareth by the writs abovesaid, that the guardian shall have a writ of intrusion of ward against the heir as well at his full age, as during his nonage. E

There is another writ *de valore maritagii* for the lord or his executors against the heir, without speaking of any intrusion made by the heir into the land. And the writ is such: F

The king to the sheriff, &c. If A. &c. shall make you secure, &c. then summon, &c. wherefore, (a) whereas the marriage of him the said L. (&c. as in the last writ, until) of our realm, the aforesaid L. refused that marriage, and when he came to his full age, refused to satisfy the aforesaid A. for the same marriage, and yet unjustly refuseth, to the great damage, &c. and against the form of the statute, &c.

(b) And if the heir be in the lord's custody, and marry himself within age, without the assent of the lord, and when he cometh of full age, he enter upon the lord, and put him out of the land, then the lord shall have a writ of forfeiture of marriage against him, for the double value of the marriage. And the writ shall be such: G

(c) *If A. shall make you secure, &c. then summon C. the son and heir of D. that he be before our justices, &c. to shew* H

(a) *Note*; This writ does not lie till the heir be out of ward by full age, or by making him knight; so that if the heir dies before such full age, &c. the value is lost. 6 Co. 75.

(b) To entitle one to have the double value, see 16 Ed. 3. *Action sur le Stat.* 14. but he need not count, so 14 Ed. 3. *ibid.* 16, 17.

(c) See 16 Ed. 3. *Action sur le Stat.* 14. 18 Ed. 3. 18. and yet the statute of *Merton*, cap. 6. does not give an action but only a retainer. 2 Ed. 3. *Action sur le Stat.* 23. that he has election, and if he chooses this, he shall not retain the land. 33 Ed.

3. *ibid.* 31. but see *contr.* Temp. Ed. 1. *ibid.* 36.

Note; He ought to shew in his count, that the feme was tendered, 28 Ed. 3. 92. Dy. 255. b. and there, though the lord after the tender, &c. renders on the land, and accepts the relief of the heir, yet he shall have the forfeiture of the marriage. Also, although the heir be married by the ravisher, the lord has his election to have either ravishment of ward or forfeiture of the marriage. 3 Ed. 2. *Action sur le Stat.* 27.

Note for form of the writ, 14 Ed. 3. *ib.* 17.

where-

wherefore, whereas the marriage of him the said C. together with the wardship of one acre of land with the appurtenances in N. belong to him the said A. by reason of a demise which L. (who had that wardship of the demise of F. to whom G. demised it, of whom the aforesaid D. held his land by knight's service) made thereof to the aforesaid A. and he the said A. oftentimes tendered to the aforesaid C. while he was under age and in his wardship, a competent marriage without disparagement, according to the form of the statute thereof provided by the common council of our realm, he the said C. refusing that marriage, hath married himself without the licence and will of him the said A. and hath intruded himself into the lands aforesaid (the aforesaid A. not being satisfied for the marriage aforesaid) and refuseth to satisfy him the said A. for the said marriage, to the great damage of him the said A. and against the form of the statute aforesaid, as he saith: and have, &c. and summon, &c. *Witnesi, &c.*

I And this writ lieth where the lord granteth the wardship of the heir and land of his tenant unto F. who granteth the same heir and land unto L. who granteth the same over unto the said A. the now plaintiff, who tendereth marriage unto C. and he refuseth the same, and marieth himself during his nonage, and at his full age entereth into the land, the marriage not satisfied, &c.

K And otherwise for the lord against the mesne tenant, thus:

If A. shall make you secure, &c. summon, &c. B. the son and heir of C. that he be before our justices, &c. to shew wherefore, whereas the marriage of the aforesaid B. belongs to him the said A. for that the aforesaid C. held his land of him by knight's service, and he the said A. hath frequently tendered a competent marriage without disparagement, &c. to the aforesaid B. while he was under age, he the said B. hath refused to admit that marriage, and hath married himself without the licence and will of the aforesaid A. to the great damage, &c.

L And the lord may have such a writ of forfeiture of marriage against the heir of the mesne, if he marry during his nonage, and enter into the mesnalty, or take the rent and services of the tenant paravail, and the writ shall be general,

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neral, as if he were tenant paravail, &c. not making mention of the mesnalty.

If a man be tenant in tail, the reversion to the king, **A** and the king licence him to alien in fee, and to take back an estate unto himself and his wife in tail, the remainder to his right heir, and he make such feoffment, and take back an estate unto himself and his wife in tail, the remainder to his right heirs, and die, his heir within age; the king, notwithstanding his licence, shall have the wardship during the life of the wife, for that the licence doth not give him power to alien the king's reversion, &c. And when the reversion cannot be discontinued, the estate-tail cannot be discontinued, but by his death the heir may enter into the land, and so the king may in his right (*a*)

Vide Dyer 8.
& 12. & 132. b.
C. 2 part 92.
11 H. 7. 19.
34 Ed. 1. pl.
129. 6 Ed. 3.
Gard. 9.

(*b*) If a man have lands for life, the remainder in fee **B** unto another, and he in the remainder die, his heir within age, he shall not be in ward during the life of the tenant for life; because that during his life, the tenant for life is tenant to the lord paramount, although the land be holden by knight's service. And the guardian shall put out the termor who holdeth for years of the lease of his tenant.

1 Ed. 3. 3.
36 H. 8.
Leases 18.
contr.

(*c*) And the statute of *Marlbridge* in a manner proveth **C** he may so do. And there are many old books to prove the same by judgments that are given; and it seemeth reasonable that it should be so, by the ancient title which the lord hath, when he reserved such services upon his feoffment, to have the wardship if he died, the heir being within age.

C. 3 part 35.
41 Ed. 3. 18.
Br. War. 20.

(*d*) And if the tenant be disseised and die, his heir being **D** within age, the lord shall seize the ward, and enter into the land upon the disseisor in the right of the heir.

33 H. 6. 16.
Prisot.

(*e*) But if the tenant infeoff his son during his non-age, who doth homage unto the lord, and afterwards the tenant

(*a*) *Stamf. Prærog.* 56. 40 *Aff. pl.* 36. 21 *Aff. pl.* 15. 21 *Ed. 3. pl.* 58.

(*b*) So if lands are leased to the baron and feme. and to the heirs of the baron who dies. 28 *Ed. 3.* 93.

(*c*) 5 *H. 7.* 3. 6. 14 *H. 7.* 22. 15 *H. 7.* 7. 33 *H. 6.* 42.

(*d*) *Vide infra* K.

(*e*) 36 *Ed. 3. Gard.* 11. 4 *Ed. 3.* 20. 33 *H. 6.* 16. *contr.* 31 *Ed. 3. Gard.* 55. 255. *Mag. Chart. c.* 3. 3 *Ed. 2. Avostry* 189. 4 *Ed. 3.* 20. But (*F.*) see 27 *Ed. 3.* 19. 8 *Ed. 2.* 96. 18 *Ed. 3.* 29. 24. 97. 8 *H. 3. Ward.* 139. *contr.* die

die, the heir within age, the lord shall not have the wardship of him, because he hath accepted him for his tenant in the life of the father. But it appeareth by *Magna Charta*, That the lord shall take homage of the heir before he have the wardship of him; but that is after the death of the ancestor, and not in the life of the ancestor, and so was the law taken in old books.

F If a man purchase lands by feoffment which are holden severally of divers lords by knight's service, and afterwards die, his heir within age, that lord who first getteth the ward shall have him, because there is no priority; but if he purchase lands which are holden by knight's service of one lord, and afterwards purchase lands by knight's service of another lord, and die, his heir within age, that lord shall have the wardship of the heir of whom the land first purchased was holden, for he holdeth of him by the more (a) ancient feoffment and priority, than he holdeth of the other lord.

And if a man hold of the king by posteriority, and hold lands of another lord by priority, and afterwards die, his heir within age, the king shall have the wardship of his body by his prerogative, not having regard to the priority or posteriority.

And if a man hold of the king by posteriority, and of (b) another lord by priority, and afterwards the king grant the

queen, where the reversion is in the king. 18 Ed. 3. 13. Stanford, feigniory

14 Aff. Br.
Affide 192.
Com. 133.
36 Ed. 3.
Gard. 11.
31 Ed. 1.
Gard. 155.
Br. Feal y.
Good Bar in
forfeiture of
marriage, in
7 Ed. 2.
Action sur
star. 31.
So of land in
use, 21 H. 8.
B. Preroga-
tive 92.
C. 5 Part 36.

Quere, If
plenary be a
good plea
against the
Prerogative 13.

(a) Although he comes to the feigniory or honour of which the tenement is held by escheat or purchase, the king shall have the ward, notwithstanding the priority, because he is the chief lord, *de quo omnia tenementa tenentur*. See *Bract.* 87. 5 Ed. 3. 4. adjudged. 24 Ed. 3. 31. 65. adjudged. See 12 H. 4. 25.

(b) See 21 Ed. 3. 41. but more fully *F. Prærog.* 16 *A.* holds of *B.* by priority, and of the king as of the honour of *Berkhamstead* by posteriority; the king grants the honour of
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B. to prince *E.* whom he creates by the same letters patent duke of Cornwall, *habend' eidem duci & ipsius & hæredum suorum reg' Angl' filiis primogenitis & dicti loci ducibus in regno Angliæ hæreditario successoribus, &c.* ita quod ab eodem ducatu nullatenus separantur, vel aliquibus aliis quæ dicti loci ducibus per nos vel hæredes nostros donentur, &c. with a proviso, that if any happen to take by force of the said grant, &c. *Quod dictus ducatus ad nos vel hæredes nostros reges Angliæ revertantur retinend' quousq', &c. de*
C
hujus-

seigniorie unto the queen for life, and afterwards the tenant die, his heir within age, the queen shall have the wardship of the body, not having regard unto the posteriority, because that the reversion of the seigniorie doth remain in the king. 24 Ed. 3. 66. *Stamf. Prærog.* 11.

But if the king hath granted the remainder of the seigniorie in fee unto a stranger, then it seemeth the queen shall not have the wardship of the body, for the seigniorie of posteriority, &c. and priority is changed by the feoffment of the tenant of the land. And if he make a feoffment in fee of the land which he holdeth by priority, and take back an estate again of the same, now he holdeth the same land of that lord by posteriority, whereas he held it before of him by priority. But if the lord of whom the tenant holdeth by priority, grant his seigniorie unto another in fee, and take back again an estate in the seigniorie to him in fee, &c. yet the tenant holdeth of him by priority, as he held before, because the pleading of priority is to say, that he holdeth of such a man and his ancestors, or of those whose estate he hath in the (a) seigniorie *per antiquius feoffamentum*, &c. than he holdeth the other land, so that the feoffment of the land doth make the priority. And if

If he make a feoffment and this done to his use; quære if the priority be gone. 2 Ed. 2. Fitz. Gard. 2. acc'.

3 Ed. 3.

Gard. 19.

24 Ed. 3.

Gard. 37.

33 Ed. 3.

Gard. 12. cont.

11 Ed. 3. 115.

This not law. 21 Ed. 3. Gard. 41.

huiusmodi filio apparen', &c. A. dies, his son within age, and it was demurred and doubted in law, who should have the ward; and by *Wilby*, the prince shall have it; and for this see 24 Ed. 3. 31, 38, and 65. accordant. But there the case was on a grant for life to the queen, remainder to the prince and his heirs males, kings, &c. and so there was a reversion in the king, and therefore it seems by that book, that the king shall have his prerogative; *contra*, if the remainder had been limited over in fee-simple. See 12 Ed. 3. *Prærog.* 23. And it seems by 24 Ed. 3.

66. that if a seigniorie be granted to A. for life, remainder to the king in fee; the tenant for life shall have the prerogative, because he holds in right of him who has it.

(a) See *Rast. Entr.* 387. *Prædict.* A. the father of the infant & antecessores sui & illi quor' stat' issi habuerunt in eodem manerio de S. tenuer' idem maner' de S. de eodem G. & antecessoribus suis, quorum statum illi habuerunt in dominio ejusdem manerii de S. per servitium militare per antiquum feoffament', &c. See 3 Ed. 3. Gard. 19. adjudged, accordant 11 Ed. 3. Gard. 115. per *Sbard.* 21 Ed. 3. 41.

the

the tenant (*b*) forejudge the mesne, of whom he holdeth by priority, &c. yet he shall hold by priority of the lord paramount, as he held of the mesne before, &c.

G The mayor and aldermen and chamberlains, by the custom of *London*, shall have the custody of any orphan in the city, and if they commit the custody of such orphan to another, he shall have a writ of ravishment of ward against him who taketh the ward out of his possession.

H And if the guardian marry the heir after the age of fourteen years, and afterwards the heir be taken by a stranger, the guardian shall not have a writ of ravishment, &c. because he hath had the effect of his marriage.

I If a man have a ward in the right of his wife, although the wife dieth, yet the husband shall have the ward, because it is a chattel vested in him. 10 *H.* 6. 11. 30 *Ed.* 3. 6.

Tenant in tail grants his estate of a manor unto which an advowson is appendant, the

church void; tenant in tail dieth, the grantee shall have the advowson. So if the church void during the term, and the term expire. 9 *Ed.* 3. *Quare impedit* 18.

K (*c*) Where the tenant maketh a feoffment by collusion, and the lord accepteth the services of the feoffee, then he shall not have the wardship of the tenant's heir, nor shall aver the collusion.

And if a man at this day make a feoffment in fee to his use, and the lord accept the services of the feoffee; yet if the feoffor who hath the use, die, his heir within age, the lord shall have the wardship of his heir by the statute of 4 *H.* 7. c. 17. (*d*).

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But the custody que use of a feignory shall not have guard, for the feoffees before 27 *H.* 8. were lords.

A And if a man lease lands for term of life, the remainder to the husband and wife in tail, the remainder in fee to the

(*b*) This seems not law, for when the tenant forejudges the mesne, the services due to the mesnalty are gone, and he is become tenant to the lord *de novo*, so that he shall hold of the lord by the services of the mesne; so that if the tenant ought to hold in chivalry, and the mesne in socage; now the tenant himself shall hold in socage of the lord, and so it is agreed, that by the forejudger he is now tenant to the lord paramount by posse-

riority. 11 *Ed.* 3. *Gard.* 115. in a writ of ward by the bishop of *Exon* against *R. B.* for the body of *W.* son of *B. de Berclay*. See 33 *Ed.* 3. *Gard.* 12. *per Shard.*

(*c*) 31 *Ed.* 1. *Gard.* 33. 155. 12 *Ed.* 3. *Gard.* 33. 36 *Ed.* 3. *Gard.* 11. 33 *H.* 6. 16. 29 *Ed.* 3. 48. 8 *Ed.* 3. 284.

(*d*) And thereon he shall have a general writ and a special count. *Dyer* 8, 9.

heirs of the husband, and the husband and wife die, his heir within age being tenant for life, his heir shall not be in ward (a).

27 H. 8. 26.
Fitzherbert
contra.
Vide 34 & 35
H. 8. Dy. 54.
4 H. 6. 19.

If the king's tenant giveth lands in tail without the king's licence, and the king accepteth the ancient tenant for his tenant, and the services, and afterwards the donee in tail dieth, his heir within age, the king shall have the wardship of him, as seemeth by the statute of 34 Ed. 3. cap. 15. And this acceptance of the services shall not conclude the king; for the king shall not be concluded, &c. if he have matter to shew which may serve him. And yet in anno 4 H. 6. it is adjudged contrary; and therefore *quære* the law in that case. **B**

Litt. 22. b.

And the lands of the wife within age shall be in ward, although her husband be of full age. **C**

N. B. 96. b.
26 H.

And if a woman be past the age of fourteen years at the time of the death of her ancestor, she shall not be in ward.

35 H. 6.
Gard. 14.
27 H. 8. 9.
39 H. 3. 8.

A committee of the king shall not have a ward by reason of the ward, but the king shall have the same, because the king remaineth guardian, &c. and the heir shall sue livery. **D**

2 H. 4. 19. ac.
40 Ed. 3. 14.
cont. 10 Eliz.
Dyer 277.
The executors
of the prede-
cessor shall
have the ward.
Br. Q. Imp. 47.
Litt. 23.

(b) If a bishop have title to have a ward, and do not seize him in his life-time, and die, the successor shall have that ward, and shall seize him, &c. Otherwise it seemeth if the bishop had seized him.

If the heir female be married by the lord before her age of fourteen years, and afterwards the husband die, the heir female shall not be married again by the law, &c. And **F**

(a) But after his death he shall be in ward, adjudged 24 Ed. 3. 33. for the heir in such case is in by descent, and therefore if he becomes tenant in demesne, or by fiction of law, as by rescuit or aid prayer, he shall have his age, see 24 Ed. 3. 69. adjudged, and 25 Ed. 3. 42. Lands held *in capite* were given to A. for life, remainder to B. his son in tail, remainder to the right heirs of A. who died, B. shall pay relief to the king. 26 Ed. 3. 71. Dyer 308. 40 Ed. 3. 9. The

grandfather was lessee for life, remainder to the father in tail, remainder to the right heirs of the grandfather of lands *in capite*. The father dies, and the grandfather and son levy a fine to J. S. and take back an estate to the ayl for life, remainder to the son and his wife in tail, remainder to the right heirs of the grandfather; the grandfather surrenders, &c. the son shall pay relief. Dyer 235.

(b) 40 Ed. 3. 14. 2 H. 4. 16. 11 H. 4. 80. 7 H. 4. 35.

by

by that same reason he shall not have a writ of ravishment of ward, if another man do ravish her afterwards.

- G** (c) If the grandfather have a son, and the son take wife, and have issue, and die, the mother of the issue shall have the wardship of the child and not the grandfather, although the issue may have the land which ought to descend to him by the grandfather, and although that the mother shall not have the land. *Hill. 31 Ed. 3.*

Lit. 25.
C. 6 Part 22. b.
Brief 327.
30 E. 3. 17.

- H** If an infant recover land by a writ of *dum non fuit compos mentis*, he shall not be in ward; and so it seemeth if (a) he recover by a formedon or other action auncestrel, where he could not enter, because his ancestor did not die tenant to the lord, &c. nor in his homage.

11 H. 7. 12.
contra.
7 H. 4. 12. ac.
Br. Gard. 98.
43 Ed. 3. 18.
contra.
14 H. 8. 14. 32.
8 E. 4. 7.
27 Aff. 21.

- I** And a man may seize his ward, although he be apprentice or in service of another.

- K** But if the tenant maketh a feoffment by collusion, the lord ought to recover the land by a writ of right of ward, before he shall have a writ for the ravishment of the ward, &c. (b) 12 H. 4. 13.

12 H. 4. 13.

- L** If a man be tenant by the curtesy of a feigniory, the heir shall not be in ward during the life of the tenant by the curtesy, &c.

Bro. Gard. 110.

But if a man have issue a son, and afterwards take a wife who hath lands holden by knight's service, and have issue by her, and afterwards the wife die, if the husband be not tenant by the curtesy of the land, then the husband's younger son shall be in ward during the life of his father, &c.

N. B. 99.
30 E. 1.
Gard. 156.

- M** If an infant be married in the life of his father within the age of consent, and afterwards the father die, the in-

30 Ed. 1.
Gard. 156. ac.
but shall not
have forfeiture
upon tender and refusal.

(c) See *Ratcliff's case*, 7 Co. 83. The mother shall have the custody of her son, or daughter and heir apparent, against a deforcer, but not against a guardian in chivalry, as in the case of a father. 9 Ed. 4. 53.

(a) Tenant in tail, with a remainder in fee, aliens in fee, and dies without issue, the heir of him in re-

mainder recovers in a formedon, he shall not be in ward; by *Dyer, Trin. 3 Eliz.*

(b) Or right of ward for the body. 12 H. 4. 13. It seems he may seize the body immediately. *Kelw. 120.*

Note; A tenant for life of a feigniory shall have wardship, but not escuage. 6 Ed. 2. Gard. 122.

fant being within the age of consent; the lord shall have a writ of ravishment of ward for the infant, because he may perhaps disagree unto the marriage.

7 H. 6. 12.
In case of the
king.

(c) And the lord of a villain shall have the wardship **N** of the land, and the body of the heir of a villain, if he seize him before the lord, &c. otherwise not of the land.

40 Aff. 7.
Br. Vill. 31.

If lands descend unto the wife, and afterwards the wife **O** have issue by her husband, and die before the husband en- treth, so that he shall not be tenant by the curtesy; the issue shall (d) be in ward, if he be within age, and if he be not heir apparent to the husband; and so if the issue by the wife were a woman, and within age, where the hus- band hath a son living, that issue within age shall be in ward, during the life of the husband who is her father.

31 Ed. 1.
Gard. 154.
2 Ed. 2.
Gard. 3.

And *Pasch.* 31 *Ed.* 3. the opinion was, That if the husband have not land which shall from him descend to his issue, that then his issue shall be in ward for the lands of his wife, if he were within age, &c. in the life of the husband: but it seemeth that the law is not now taken to be so.

26 Ed. 3. 65.
33 Ed. 3.
Gard. 161.
N. B. 92.

Guardian in socage granted the wardship over to a **P** stranger, and the grant awarded good. *Hill.* 26 *Ed.* 3. & *Hill.* 31 *Ed.* 3.

11 H. 7. 12.
12 H. 7. 10.
6 H. 4. 4.
Dyer 304. b.
32 E. 3.
Gard. 32.
7 Eliz. 304. b.
Supra. 90. H.
Vide 2 & 3
Eliz. Dyer 190.

If an infant enter for a condition broken, upon a feoff- **Q** ment made by his ancestor, he shall be in ward for that land, if it be holden by knight's service.

(a) And a man or a woman shall have a writ, *Where-* **R** *fore he ravished his or her son and heir: Or, Wherefore he ravished his or her daughter and heir; or ravished his or her cousin and heir, &c.* and that by the common law.

And the process in a writ of ward appeareth by the sta- **S** tute of *Marlbridge*, cap. 7. viz. Summons, Attachment and Distress (b).

(c) 40 *Aff.* pl. 17. *Escheat* 16.
Gard. 131. *Litt.* 25.

(d) Be it male or female. 31 *Ed.*
3. *Gard.* 154. 8 *Ed.* 2. *Trespass*
235. 33 *H.* 6. 55.

(a) 21 *H.* 6. 14. 32 *Ed.* 3. *Gard.*
32. *Ant.* 90 *H.*

(b) 13 *Ed.* 4. 12. *Bro. Faux.*
Lat. 81. See *Dyer* 304. And by
some, if the sheriff returns *nihil*, &c.
yet a *distingas* with proclamation shall
issue. 11 *H.* 6. 3. *contra* 21 *H.* 6.
56.

And

And in a writ of right of ward, if he cometh not at the distress, then the proclamation shall be awarded, that he shall have day by which two or three county courts are holden in the mean time, before the return thereof; and if the writ be returned served, and he do not appear, he shall lose the wardship, and the plaintiff shall by judgment recover the same (c).

Writ of Escheat.

WHERE the tenant who hath an estate in fee-simple of any lands or tenements, which he holdeth of another, dieth seised without heir general or special, the lord shall have the writ of escheat against him who is tenant of the lands or tenements, after the death of his tenant, and by this writ he shall recover the land, because he shall have the same in lieu of his services.

36 Ed. 3. 17.
3 Ed. 3.
Bar. 257.
Foundership
shall not escheat
nor be forfeited,
because it is tied
to the blood.
All rent-charge
shall not escheat
by death, contra
by attainder.

24 Ed. 3. 12. Br. Escheat. 9 H. 7. 37. 7 Ed. 4. 11. 120. If abbey or parish church be dissolved, the lands which they held shall escheat. 21 H. 7. 89. If a man holdeth two acres by several services of one lord, he ought to have two writs of escheat.

A But if tenant in tail die without heir, he in the reversion [144] shall not have a writ of escheat, but a formedon in the reverter.

But if a man be tenant in tail of land, the remainder to his right heirs, and die without heir, then the lord of

Tenant in tail
of a feignory
grants the same
which escheats,

tenant in tail dieth without issue, he in the reversion shall have escheat of the land, because he is come in lieu of the feignior. See 40 Ed. 3. 33 Ed. 3. Escheat 9. but by this opinion he shall not have escheat, because the reversion was out of him at the death of the tenant. (1)

(c) See 12 H. 4. 16. 29 Aff. 35. See 24 Ed. 3. 44. Judgment given and an inquiry of damages, &c. afterward, and therefore error brought. 42 Ed. 3. 1. an inquiry of damages, and whether the heir were married, &c. and judgment given afterwards. See 24 Ed. 3. 49. judgment for the ward instantly; and Note the cause: A resummons in a writ of ward was sued by the heir of the plaintiff, against the executors of the defend-

ant, who plead that the heir was of full age in the testator's life-time, and that before this writ purchased they had fully administered; and the plaintiff, per Chasement replied, that he had not assets, &c. and he had judgment instantly for the ward, and the inquest was taken on the issue for his damages; and afterwards the defendant could not be essoined, because the original was determined. 24 Ed. 3. 49. 53.

C 4

whom

(1) The case 33 Edw. 3. Fitz Herbert v. Escheat 9. is as follows viz. "If rent service be given in tail & the tenant attorn, & the grantee grant over the services in fee & the tenant attorn & die without heirs, so that the land escheats to the second grantee, & the first grantee die without issue, the Donor shall have a writ of escheat, & not formedon in the reversion, &c., it seems that he shall not have any action, seeing that (equivocal) the feignory & the reversion also was out of him at the time of the death of the tenant of the land"

Writ of Escheat.

whom the lands were holden in tail, shall have a writ of (a) escheat, because the tenant in tail was tenant unto the lord for the fee-simple that he had in the land, &c.

3 H. 2.
Entr. 38.
7 H. 4. 17.
contr. if the
diffisor die or
alien, for these
are tenants by
title, (1)

(1) *Contra if the dissonor
alien or his issue is in
by title; for then escheat
does not lie. 7 H. 4. 17.*

5 Ed. 4. 14.
32 H. 6. 27.
37 H. 6. 1.
2 H. 4. 8.
15 E. 4. 14.
contr.

But if a man be tenant for life, the remainder in fee B
unto a stranger and his heirs, and afterwards the stranger
die without heir, and afterward the tenant for life die;
the lord shall not have a writ of escheat, because the ten-
nant for life was tenant to the lord, and not he in the re-
mainder, &c. But there the lord shall have a writ of in-
trusion, if a stranger enter on the land after the death of
tenant for life. 15 P. Per Hank. 11 H. 4. 10.

(b) And if the tenant be disseised, and afterwards die C
without heir, &c. it seemeth the lord shall have a writ of
escheat, because his tenant died in the homage.⁽¹⁾ And in
that case he shall have a writ of right of ward, if the te-
nant die, his heir being within age, and by the like reason
he shall have a writ of escheat.

If the tenant die without heirs, and afterwards the lord D
die; the heir of the lord shall have a writ of escheat to re-
cover the land, &c. for that escheat made, and shall give
a right unto the lord to have the land.

46 Ed. 3. 4.
The son brought
escheat, suppos-
ing that the
tenant held of
his father whose
heir he is, and
exception taken
because it ought
to be Quod de
eo tenet.

And this writ shall descend from the lord unto his heir, E
&c. and the forms of the writs of escheats are divers: One
where the tenant is a bastard, and dieth without heir, and
then the writ is such:

*The king to the sheriff, &c. Command A. &c. that he ren-
der to B. ten acres of land with the appurtenances in N.*

(a) See *contra per Scot.* 12 Ed. 3.
See 15 Ed. 4. 13. 3 H. 6. *Escheat.*

(b) See 17 Ed. 3. 64. *per Thorp.*
So if tenant makes a lease for life by
Hankf. 2 H. 4. 8. See 7 H. 4. 17.
32 H. 6. 27. If tenant makes a lease
for life, and then dies, having issue
B. who dies without heir, and after-
wards tenant for life dies; if a tenant
abates, the lord may have intrusion;
but by *Hankf.* he shall not have es-
cheat; *contra Fitz.* For the words of

the writ are true, that he is dead with-
out heir, and that he holds of him;
but agreed by all, that if he brings
escheat, he cannot have this writ,
supposing that the lessor dies without
heir, though he was the last that was
seised in demesne; for it is a good
plea to say that he had issue B. who
survived him; and it is not material
whether B. was seised or not. See
11 H. 4. 11. 7 H. 5. 9. (2) .10.

(2) *I do not think that the statements of this note are supported by the which*
cases cited - The case cited 11 H. 4. 10 seems to have been the case relied on where Hankf.
said "a writ of escheat should be brought of the heirs of him who died last seised of the de-
mesne, for suppose, a reversion or remainder should escheat to a foreigner or the tenant
for term of life dies, & a stranger abates, the foreigner shall have a writ of intrusion
against him upon the matter & not a writ of escheat." And it seemed admitted
by the court, that as escheat was founded upon the death of the tenant without heir, the
plea that the tenant left issue was good in bar of the action - But Fitz. was not
in the case & the above positions do not appear -

which C. held of him, and which ought to revert to him the said B. as his escheat, for that the said C. was a bastard, and died without heir, as it is said, &c.

F And if he be not a bastard (c) but die without heir, then the writ is, *And which ought to revert to him the said B. as his escheat, for that the aforesaid C. died without heir; or thus, for that the aforesaid C. committed felony, for which he was hanged; or, for which he (d) was outlawed, or, for which he abjured the realm, &c. and unless, &c.* And the form of the writs for the heir appear in the Register.

G And the king shall have a writ of escheat for lands in London, if the tenant die seised of lands there without heir, because the lands in London are holden of the king; and this writ he may sue in the king's bench or in the common pleas.

H And if a man be beheaded for felony, or die after judgment, before that he be executed by the officer; yet the (a) writ shall say, *pro quo suspensus fuit, &c.* and it is not material whether he be hanged or not.

Or if after judgment he be delivered to the bishop. 34 Ed. 3. Escheat. 10. contrary if he stand mute.

4 Ed. 4. 13. 22 H. 6. 38. Newton. If a man go beyond sea without licence, and take wife there, and have issue and die, the land shall escheat.

And the course in the Register was, That if a man were attainted of felony, the king sent a writ to the sheriff to enquire what lands and tenements he had, and which he held of the king, and which of other lords, and by what service, and what they were worth by the year *ultra reprises*, and that he certify the same. But the same is altered by the statute of 28 Eliz. 3. 9. which is, that a commission be made out unto the sheriff to take the inquest: And also there was another writ appointed by the Register, directed unto the sheriff to enquire whether such house or

48 Ed. 3. 34. Where the tenant is utlage of felony; the lord hath election to have a writ of escheat; supposing that the tenant was utlage, or that he died without heir.

(c) Or committed felony. 19 Ed. 3. Brief. 251.

(d) And the outlawry for felony shall not be reversed, without suing a *scire facias* against the lord mediate and immediate. 9 H. 4. 3. accordant, and in this writ, error in the

outlawry cannot be shewn. Dyer 67.

(a) See Rot. Parl. 8 Ed. 2. M. 5. *ubi decollatur per R. & Concil.* If the appellee be killed in battle, the judgment is to be given against him; otherwise the lord cannot have the escheat. 8 Ed. 1. Judgment 225.

land

land which *W.* had, who was attainted of felony, were seized into the king's hand for a year and one day, or not, and of whom they were holden, and who had the year, day and waste, and ought to answer the king for the same, and that he send the same before the king, &c. and now in place of these writs, there ought to be a commission granted to enquire thereof, directed to certain persons by the statute aforesaid.

And if a man be attainted of felony, and another enter **K** into the land, and take the profits, and if it be found by commission that such a man, who was attainted of felony, had such lands and tenements, and that the lands and tenements have been in the king's hands for one year and a day; and that *B.* hath taken the profits for that year and day, and also hath had the waste thereof; and that the lands are holden of *F.*; then *F.* shall have a writ unto the sheriff to deliver him seizure of the lands, &c. *Salvo jure cujuslibet.*

49 Ed. 3. 11.

And he who hath taken the profits for the said year and day, shall answer the king for the same: and thereby it appeareth, that the king shall not have but the next year and day which cometh after the attainder, and that he who took the profits for that year, shall answer the king for the same.

And if lands be holden of an abbot, and the tenant die **L** without heir, &c. the successor shall have a writ of escheat, and the writ shall suppose, *Ought to revert to him the now abbot as his escheat, for that the aforesaid, &c. died without heir, &c. as it is said; and unless, &c.*

(a) And the tenant for life of the feignory shall have **M** a writ of escheat, or tenant in dowry, or by the curtesy, and also the lord shall have a writ of escheat of the mesnalty, which is but a rent service, and shall demand the rent by the writ.

7 H. 6.
Escheat 12.
21 n. 7. 30.

And the king shall have a writ of escheat of tenements **N** within cities and boroughs, which are holden of him in fee-farm.

(a) And if the tenant for life dies before entry, he in reversion shall have a writ of escheat. *Kelw.* 114. See 7 R. 2. Escheat 4. 33 Ed. 3. Dowry 137. contr. 8 Ed. 2. Escheat 12.

(b) And

- O (b) And if a man have title to have a writ of escheat, if he accept homage of the tenant, he shall not afterwards have the writ against him, because he hath accepted him his tenant; and so if he accept fealty of him. But if he accept the rent of the tenant, that shall not bar him of his writ of escheat, and the process is summons, grand cape and petit cape, as in any other *præcipe quod reddat*. But it is otherwise if he accept (c) rent from the heir of the disseisor. *Co. Lit.* 268. a. b.

3 H. 6. 32. 49
E. 3. 5. 2.
But by the count
he shall suppose
the land was hol-
den.
11 H. 4. 82.

Writ of Covenant.

[145]

A WRITS of covenant are of divers natures; for some are merely personal, and some covenants are real; to have a real thing, as lands and tenements; as a covenant to levy a fine of land is a real covenant: but a writ of covenant which is merely personal is, where a man by deed doth covenant with another to build him a house, &c. or to serve him, or to infeoff him, &c. and he doth not the same according to the covenant; then he with whom the covenant was so made shall have writ of covenant against him. And there is a note in the Register, which is this; *a writ of covenant ought not to be made according to*

3 Bl. Comm.
156.

(b) 13 Ed. 1. *Avowry* 235. The elder son receives homage of the middlemost, seised in fee, who dies without issue, the younger brother shall have the land, and the issue of the elder brother, if not born at the time, shall have it, &c. See 11 Ed. 3. *Dower* 63. where acceptance of the homage by the wife, after the death of her husband, shall oust her of dower of the tenements. See 5 H. 7. *Droit* 66. Acceptance of homage from the tenant, shall bar in a writ of right. See 17 Aff. 3. the disseisee accepts homage from the disseisor, it shall bar him for his life, but not his heir. 26 Ed. 3. 72. Tenant dies without heir, the lord enters and makes a feoffment,

and takes back an estate for life; a bastard of the tenant enters and infeoffs G. of whom the lord accepts the homage; and it is demurred in law, whether this has not excused (estopped) him to have the land; the doubt is, because the seigniority was absolutely gone by the entry and acceptance of the fealty, in bar of the writ of entry *sur Disseisin*. 13 Ed. 3. *Bar.* 353. *Vide ant. E.*

(c) And Note; Acceptance of the rent shall not make a change in the avowry, because it may be received as by the hands of his bailiff, &c. but it is otherwise of homage or fealty. See 4 H. 6. 21. *Co. Lit.* 268. a. b.

law

law merch. without a deed, because no plea of covenant can be without deed, and every man ought to be judged according to his deed, and not by another law; and the form of the writ is such: *The king to the sheriff, &c. command A. that, &c. he keep his covenant with B. &c. touching the damage and loss by the breach of trust and default of W. the son of R. apprentice of the aforesaid B. committed within the term of six years, B to be restored to him the said B. and unless, &c*

18 Elis. Dy.
217. Sir An-
thony Cook's
case.

And if a man make a covenant by deed to another and C his heirs, to infeoff him and his heirs of the manor of D. &c. now if he will not do it, and he to whom the covenant is made die, his heir shall have a writ of covenant upon that deed; and also his assigns shall have a writ of covenant where the covenant is made to him and his assigns.

And this though
not named in the
deed. 1 C. 0.
553.

And so executors shall have a writ of covenant, of a D covenant made unto their testators for a personal thing, and these writs appear in the Register.

And it appeareth by the Register he may sue a plaint E of covenant in the county or in the hundred court, &c.

And that he shall have a *recordari* to the sheriff to remove the same out of the county into the common pleas, as it shall be done in a replevin sued there.

And if the plaint of covenant be sued in the hundred, or in other court of other lord, he shall have an *accedas ad curiam* directed unto the sheriff to remove the plaint into the common pleas (a).

And the writ of covenant for executors is such: Com- F mand I. that, &c. with A. B. and C. executors of the testament of N. the covenant made between him the said N. and W. of E. for him the said W. to continue with the aforesaid

against
Exec. (a) A man covenants, that neither he nor his heir shall erect any mill in such a place, and afterwards he erects a mill, and an action of covenant is thereupon brought by the heir, and well, 4 H. 3. 57. and so it is if the lessor ousts the lessee and dies, or tenant in tail leases for years and dies,⁽¹⁾ and the issue ousts the termor, he

shall have covenant against the executors. 47 Ed. 3. 22. 48 Ed. 3. 2. but 38 Ed. 3. 24. is, that he shall recover the whole in damages against the heir, if he has assets by descent, per *Knivet* and *Skipw.*

W. W. See 21 H. 6. 55. 2 H. 4. 3. 14 H. 6. 18. 20 H. 6. 34.

N. as

²
(1) "If I owe an estate lease to me tenants for a term of years & afterwards I oust me, & after his decease I bring my writ of covenant against you, it is no answer to say that you have not the tenants as heir." Per *Willm.* 4 Edw. 3. 57.

N. as an apprentice for seven years, and after that term completed to serve him the said N. for so long time as he the said W. should eloin himself from the service of the same N. within the said term, which covenant to fulfill and keep he the said W. by his writing bound himself, &c. and unless, &c. And the said executors shall make you secure, &c.

G And if a man make such covenant by word; as to build him a house, &c. and he do it ill; then the party shall have an action upon the case for the ill doing of it (b).

If a man covenant by word to do such a thing for a certain sum of money, and receive one parcel of the money, and day be appointed for the payment of the rest: now if he do not according to his covenant, the other party shall have an action on the case against him for not doing it, because it is a bargain betwixt them (c).

H And a writ of covenant lieth against executors for a covenant broken of the testator, and the writ shall be, Command I and R. executors of the testament of E. that, &c. they perform to W. and A. his wife the covenant made between her the said A. and the aforesaid E. for that he the said E. his heirs or executors, should render to C. the son and heir of I. when the same C. should come to full age, his reasonable account of the issues of all the lands and tenements which the aforesaid I. held in the town of N. in the county of N. the wardship of which he the said E. had of the demise which the aforesaid A. (to whom the wardship of the lands and heir aforesaid belonged, for that the aforesaid I. held his land in socage, and the same A. was nearer to the heir of him the said I.) made thereof to him the said E. &c. and unless, &c.

V. 48 Ed. 3. 2.
10 H. 7. 18.
32 H. 6. 31.

I And by this writ it appeareth that guardian in socage may grant his estate over.

K (a) And if a man have lands for a term of years, and covenant to leave them in as good a plight as he found them, although that he pull down the houses, the lessor shall not have an action of covenant before the end of the term: For the covenant hath relation thereunto, &c.

12 Ed. 3.
Covenant 2.
40 Ed. 3. 5.
E. 1. Cove-
nant 29.

(b) 21 H. 7. 4. 3 H. 6. 36. 20 H. 6. 34. 14 H. 6. 18. 21 H. 6. 55. contra. 42 H. 4. 3. contra. 11 H. 4. 33. contra.

(c) 32 H. 6. 32.

(a) Perk. Covenant 29. As to cutting wood contra. See 5 Co. 21. a.

But

But if he do waste in wood, covenant lieth; for he cannot repair it.

26 H. 8. 3. acc.

If a man make a lease by deed poll, if the lessor put out the lessee, he shall have a writ of covenant upon the deed poll (*b*). But if a stranger, who hath no right, put out the lessee, he shall not have a writ of covenant against the lessor, because he hath no remedy by action against the stranger. But if the stranger enter by eigne title, upon the lessee, then he shall have an action of covenant against the lessor, because he hath no other remedy.

L

38 Ed. 3. 24. Skipwith and Knevit, he shall recover damages only, 24 Ed. 3. 24 he shall recover his term. 20 Ed. 3. Covenant 3. Vide 9 Eliz. Dyer 257.

(*c*) And in a writ of covenant brought by the lessee against the lessor, if the term be not expired, he shall recover the term again, if he hath put him out. But if a stranger put him out by eigne title, then he shall recover all in damages against the lessor. And the second lessee shall have a writ of covenant against the lessor, if the lease be made to him and his assignees with warranty.

M

And if a man lease lands for life by deed, and afterwards (*d*) put him out, the lessee shall not have a writ

(*b*) 17 Ed. 3. Covenant 2. accordant. But if he abate trees, &c. *contra*. Temp. Ed. 1. Covenant 29.

(*c*) See 20 Ed. 3. Judgment 177. accordant; for that the demise is good from his entry; but if tenant in tail makes a lease for years by deed, and dies seised of assents in fee-simple; yet the issue in tail may enter; and therefore the lessee shall have a writ of covenant against him to recover damages, but not to recover the term, for his entry was lawful. 38 Ed. 3. 24. Note; The writ of covenant for the lessee who is ousted by a stranger, by title is, *Quod teneat convent*, &c. *De damnis & de perditis*. See there the case of a lessee for life, the remainder in fee; the feoffee for life makes a lease for years (by *dedi & demisi*) rendring rent by indenture, and dies within the term; he in remainder enters; the lessee brings covenant against the executors, and held

that it did not lie. 1. Because it is not shewn, that he was possessed at the time of the entry of him in remainder. 2. For that without an express covenant, the executor shall not be charged in this case, for the covenant in law expired with the term. But if *A.* seised in fee, makes a lease for years and dies, and the heir ousts the lessee, he shall have covenant against the heir, for this covenant in law. See the statute *de bigamis*, and Dyer 257. 11 H. 6. 3. Covenant 23. 27. 6 Ed. 2. 17. 38 Ed. 3. 34. 16 H. 7. 10. N. B. 102. Covenant 28, 30, &c.

(*d*) 32 H. 6. 32. *contr.* if the lessee for years; and Note; Action of covenant lies against the assignee of a lessee for years for reparations, &c. for that it goes with the land; also it lies against the first lessee after assignment. 25 H. 8. Covenant 32.

of covenant against him, but an assise. But if he grant by the deed, that if a stranger enter by eigne title, that then he shall have a writ of covenant thereupon: now upon the special matter he shall have a writ of covenant, otherwise not; *quod vide Trin. 26 H. 6. Covenant, pl. 10.*

A And in *London* a man shall have a writ of covenant without a deed for the covenant broken.

B And a man shall have a writ of covenant against the sureties who became sureties, or gave security that a man should perform such covenant, &c.

C (a) And the assignee of the lessee shall maintain a writ of covenant against the lessor, although there be not any assignee mentioned in the deed of covenant. *H. 48 E. 3.*

named. As two coparceners, one covenanteth to discharge the other party, the alienee shall have covenant. 2 Com. Dig. Covenant B. 3.

D Administrators as it seemeth, shall have a writ of covenant as well as executors.

E And the writ of covenant ought to be brought where the covenant was made. But if it be brought in another county, the party shall not plead the same to abate the writ, unless the deed bear date in another county, and so the titles of covenant in the abridgments were at large for that matter.

[146]

27 H. 6. 10.

1 Leo. 2.

Covenant 11.

17 H. 6. 10.

40 Ed. 3. 5.

42 Ed. 3. 3.

39 E. 3. 9.

Finchden. If the covenant go with land, the assignee shall have covenant without being

26 H. 6

Covenant 9.

although it bear date in other county, yet the writ lieth where the land is.

(b) Covenant to levy a Fine.

F THERE is another manner of covenant, which is more in the realty. And that writ properly lieth where a man by deed granteth to another to levy a fine to him and his heirs of certain lands and tenements, he

3 Bl. Comm. 156.

(a) *Doctor and Student* 16, 17. *Bro. Covenant* 32. *F. Obligation* 16. *Perk.* 13. 40 *Ed.* 2. 5. *supra* M.

(b) And yet by *Pafson*, it is only a personal action; and a release of all actions personal, is a good plea therein; also the sheriff may return *nihil* on the

defendant in this writ, and need not summon him *in terra petita*; *sed alii contr.* 10 *H. 6.* 12, 13.

Note the difference between this and other writs of covenant; for this writ is special, and the others general. 10 *H. 6.* 13.

to

to whom the grant is made shall have a writ of covenant against him to levy a fine of that land; and the form of the writ is such :

F. Brief 367.

The king to the sheriff, &c. Command A. &c. that, &c. he keep with B. his covenant made between them (c) of the manor of N. with the appurtenances; or thus, of one messuage and one acre of land with the appurtenances in N. &c. and unless, &c.

46 Ed. 3. 4.
47 Ed. 3. 3.

And the form of the particulars in this writ shall be used as the form is in a *Præcipe quod reddat* of land, to put the particulars in the said writ.

35H. 8. P. 20.
Fines 116.

(a) And if he who ought to levy the fine, and make the conusance, cannot come for sickness or other reasonable cause into court, then he may sue a writ of *dedimus potestatem* directed unto some justice, that he go to him to take the conusance, and to certify the same unto the justices of the common pleas, and the writ of covenant ought to be sued before the *dedimus potestatem* is returned in the common pleas; and the *dedimus potestatem* ought to recite that the writ of covenant is depending in the common pleas before the justices; and the writ shall be such (b):

The king to his beloved and faithful W. Rickhill, greeting: Whereas our writ of covenant is depending before you and your companions our justices of the bench between A. and B. and C. his wife, of one plough-land with the appurtenances in N. for a fine to be levied thereof between them before you and your said companions of the bench aforesaid, according to the law and custom of our realm; and the aforesaid A. B. and C. are themselves so impotent, that without the greatest danger of

(c) And Note; On such fine levied of the manor of N. brought in the county of L. the services of the tenants in another county, held of the same manor, shall pass; and a *per quæ servitia* shall be brought in the county of L. adjudged 21 Ed. 3. 18.

(a) See the statute of Carlisle, 15 Ed. 2. for before that statute, one might have levied a fine by attorney.

Libr. Parl. 18 Ed. 1. 11. See *stat. Mag. Chart. fol. 93. Cruise on Fines. 76. 2 Reeves. 13.*

(b) See a good distinction between ancient fines and those levied at this day. A fine levied without an original, or of things not comprised in the original, or after a nonsuit recorded, good in ancient fines. 16 Ed. 3. *Abbe 13.*

their

their bodies they are not able to travel to Westminster to make the acknowledgments which are required in this behalf, at the day contained in the writ aforesaid, as we have received information: we having compassion of the estate of them the said A. B. & C. in this behalf, have given to you power of receiving the acknowledgments which the aforesaid A. B. and C. will make before you in the premisses, and therefore we command you, that going personally to the aforesaid A. B. and C. you do receive their acknowledgments aforesaid, and when you shall have received them, that you do certify your companions thereof distinctly and openly, that then the fine between the parties aforesaid, before you and your said companions in the same bench may be levied, according to the law and custom aforesaid; and have there then this writ. *Witness, &c.*

And if the *dedimus potestatem* be made unto any the justices of the king's bench, then the form of the writ is such:

The king to his beloved, &c. W. his chief justice, &c. Or thus: To our justice, &c. Whereas the warden of the house of the vicarage of the church of the blessed Peter of York, hath brought our writ of covenant against H. Knight, of the advowson of the church of F. for a fine to be levied thereof between them, before our justices of the bench, according to the law and custom of our realm, and the said warden and H. are so impotent, (as above, until) and when you shall have received them, that you do certify our aforesaid justices thereof under your seal distinctly and openly, that then the fine, (&c. as above, until) according to the law and custom aforesaid, sending to the same justices this writ. Witness, &c.

And if a man have divers writs of covenant depending against several persons in several counties, &c. he may have one writ of *dedimus potestatem* directed to one justice to take their conusance severally, and to certify them, &c. and the form of the writ is such:

The king, &c. Whereas our writ of covenant is depending before you and your companions our justices of the bench, between E. and I. of the moiety of the manor of N. with the appurtenances, and another our writ of covenant is depending before you and your companions aforesaid between him the said

E. and the *aforsaid* I. of one *messuage*, &c. (and so of others, &c.) for *fin*es to be levied between them, &c. (as above).

And if a man ought to levy a fine, and is going in the king's service, then he shall have a *dedimus potestatem* directed unto the justices to take his *conusance*. And so of a woman who is with child; and the writ shall mention the same, thus:

[147] The king, &c. *Whereas* our writ, &c. (as above, until) for a fine to be levied, &c. and the *aforsaid* W. by our command is going elsewhere in our service, and the *aforsaid* I. is pregnant and great with child, and the *aforsaid* B. is weak and impotent, by which the *aforsaid* W. cannot come, and the *aforsaid* I. and B. are not able to travel to Westminster to make the acknowledgements, &c. at the day contained in the said writ; we being willing to do a special favour to him the said W. in this behalf, and having compassion of the estate of them the said I. and B. in this behalf, &c.

22 H. 6. 13.
1 Ed. 3.
No *quid juris*
clamat lies after
judgment,
Plow. 431.

And if he in the reversion would levy a fine of his re- A
version unto another, upon a writ of covenant sued forth against him, the *conusance* should be taken in the common pleas, but the fine should not be ingrossed until the tenant for life have attorned; and the fine is said to be ingrossed, when the chirographer maketh indentures of the fine, and delivereth them to the party to whom the *conusance* is made, and then it is said, that the fine is ingrossed, and after that the *conusee* shall not have a *quid juris clamat* against the tenant for life. But the course is, when he in the reversion upon the writ of covenant sued against him, maketh the *conusance* of the reversion by fine, &c. then upon that the *conusee* shall have a *quid juris clamat* against the tenant for life; and if the tenant for life be so weak, that he cannot travel, then he may sue a *dedimus potestatem* directed to the justices to take his *conusance*, &c. and to certify the same into the common pleas, &c.

And the like writ of *dedimus potestatem* shall be granted, where the lord by fine granteth the services of his tenant unto another upon a writ of covenant sued against him. If the *conusee* sue a *per quæ servitia* against the tenant, then
if

if he be weak or sick, he may sue a *dedimus potestatem* to take his conusance, &c. and to certify the same, &c.

But now the course is to admit the defendant in a *quid juris clamat*, or *per quæ servitia*, to make attorney after a plea pleaded; and that especially where he pleadeth such plea, that he shall forfeit his estate, if it be found against him, &c. then it is clear, that he shall make attorney after the plea pleaded; and the course is now to make attorney after pleading; and if he be adjudged to attorn, to award a *disfringas ad attornandum* against him, &c.

4 Mar. Dyer
166.

B And if a man have a writ of covenant against one to levy a fine, and thereupon a *dedimus potestatem* directed to a Judge to take the conusance of the party, and the Judge take the conusance by force of the writ, and will not certify the same in the common pleas, then the party may sue a *certiorari* directed to the same Judge, reciting all the matter in what manner he hath taken the conusance, commanding him by the writ to certify the same into the common pleas: and upon that an *alias* and *pluries*, and attachment to the Judge, if he will not certify it, or return it, or shew cause why he do not certify it. And if the Judge be dead who took the conusance, he may have a *certiorari* to his executors, and an *alias* and *pluries*, and attachment, *vel causam nobis significes*; and in the end of the writ shall be this clause; *And have there the writ by which you received the acknowledgments aforesaid, and this writ, for we have given in charge to our justices of the bench aforesaid, that you have sent to them the acknowledgments and writs aforesaid under our seal, that they may receive them from you, Witnesses, &c.* And by that it appeareth, that although the *certiorari* be sent to the Judge to return the conusance taken before the justices of the common pleas, that yet he ought to sue forth another writ to be sent and directed to two justices of the common pleas, to receive such conusance taken: and the writ of *certiorari*, which shall be directed unto the justices of the common pleas to receive the conusance, is in the Register amongst the writs of covenants.

C And if a man will levy a fine of lands holden of the king in chief, then he ought to have a special writ unto the justices of the common pleas, thus:

D 2

The

Covenant to levy a Fine.

The king to his justices of the bench, greeting: *Wheras by our letters patent of our special favour we have granted to I. that he may infeoff W. of his manors of N. and I. with the appurtenances, which he holds of us in chief, &c.* (reciting the whole charter) as in our letters aforesaid is more fully contained, and our writ of covenant is depending before you in our bench aforesaid, between the aforesaid I. and W. of the manors aforesaid, for a fine to be levied thereof between them, according to the law and custom of our realm, as we have received information; we command you, that you permit that fine between the parties aforesaid to be levied before you in the bench aforesaid, according to the tenor of our letters patent aforesaid, &c.

And if it appear unto the court, that the lands are hold- D
en of the king *in capite*, the court *ex officio* ought not to suffer such fine to be levied without such a writ directed unto them, declaring the king's pleasure.

And there is another writ of *certiorari* directed unto the treasurer and chamberlains of the Exchequer, to certify the transcript of a fine in the chancery; and a writ of *mitimus* out of the chancery directed to the justices of the common pleas, to transcribe the said fine, &c.

And another form of writ of *certiorari* directed unto the chirographer, to certify into the chancery *tenorem cujusdam notæ in Cur' Domini E. nuper Regis Angliæ*, &c. as appeareth in the Register.

Writ of Dower unde Nihil habet.

29 Aff. 68.
Er. Dower 63.
Dower lieth not
against guardian
in socage, and
therefore it is
doubted if such
a guardian shall
assign dower, if
there be a dis-
seisin.

A Writ of dower *unde nihil habet* lieth, in case, where E
a woman taketh husband, who is sole seised of lands or tenements to him and his heirs in fee-simple, or unto him and the heirs of his body, &c. Or if the husband during the marriage betwixt him and his wife, be solely seised in fee-simple or in fee-tail of such estate, that the issue begotten betwixt him and his wife may inherit the same, then if the husband alien the same, or die seised thereof, or be thereof disseised, and die, his wife shall have

have a writ of dower *unde nihil habet* against him who is tenant of the freehold of the land, or against him who is guardian in knight's service of the land; and the form of the writ is,

A *The king to the sheriff, &c. Command A. that justly, &c. he render to B. who was the wife of C. her reasonable dower which falls to her share, of the freehold which was the aforesaid C.'s, some time her husband in N. whereof she nothing hath, as she saith, and whereof she complains that the aforesaid A. unjustly deforceth her, and unless, &c. (a)*

Vide 2 Ld.
Raym. 1384.
8 Mod. 355.
S. C.
1 Str. 625. S. C.

And against the guardian the writ is such: *Command A. guardian of the land and heir of J. that he render, &c. to B. who was the wife of C. &c. (b)*

Otherwise where the wife is endowed *ad ostium ecclesie*, thus: *Command A. that, &c. he render to B. who was the wife of C. one hundred acres of land with the appurtenances in N. of which the aforesaid C. some time the husband of her the said B. endowed her at the door of the church when he espoused her, whereof she nothing hath, &c.*

And if she be endowed *de assensu patris*, then thus: *Command A. that, &c. he render to B. who was the wife of C. one hundred acres of land, &c. of which the aforesaid C. (son and heir of the aforesaid A.) some time the husband of her the said B. with the assent and will of him the said A. his father, endowed her at the door of the church, &c. whereof, &c.*

B And the writ of dower *unde nihil habet* may be sued in the county before the sheriff by a *justicies*.

Perkins 67, 68.
Common laws
numbr. &
Estovers.
Old N. B. 5.
2 Ed. 3.
Dower 23.

(c) And a wife shall be endowed of advowsons, villains, commons of pasture, and of other profits or liberties of

her (a) *Note*; Although the writ is conditional, *Nisi, &c.* yet the demandant is not bound to accept tender *in pais*, for then she would lose her damages, &c. nor is the tenant bound to render himself there, and yet he may plead *semper paratus*. 11 H. 4. 62.

(b) 9 H. 5. 4. *Note* 13 Ed. 3. *Brief* 242. and if he be guardian both

of the land and body, he ought to be so named in the writ, or else it shall abate. 18 Ed. 2. *Brief* 822. Also he ought to make him heir by the writ, to him that was last seised. 11 *Brief* 473.

(c) N. B. 5. *Perk.* 68. *post.* 149. K. 12 Ed. 3. *Dower* 90.

Writ of Dower unde Nihil habet.

which her husband had any estate of inheritance; which estate the issue betwixt them by possibility may inherit, &c.

And the wife may sue a writ of dower of lands or tenements in *London*, and the writ shall be directed unto the mayor and sheriffs of *London*; and the writ shall be such: D

The king to the mayor and sheriffs of London, greeting: We command you, that you justice A. that justly and without delay, and according to the custom of our city of London, he render to B. who was the wife of C. her reasonable dower which falls to her share, &c. in London, and justice D. that justly, &c. and according to the custom, &c. he render to the said B. her reasonable dower, &c. in the same city, whereof she nothing hath, &c. as she saith, and whereof she complains that the aforesaid A. and D. do deforce her, as she can reasonably shew, that they ought to render to her, that we may hear no more clamour, &c. Witness, &c.

And by this it appeareth, that a woman shall have a writ of dower in *London* against several tenants, by a several justices, in one writ, as well as she shall have a writ of dower against several tenants by several (a) *præcipes*, and all in one writ. And the process is summons, grand cape and petit cape in the common pleas. E

(b) Writ of Admeasurement of Dower.

Post. 149. B.

THE writ of *admeasurement of dower* lieth, where the heir, when he is within age, endoweth the wife of more than she ought to have dower of; or if the guardian endow the wife of more than of the third part of the land F

(a) *A. brings dower against B. de libero tenemento in C. and afterwards before plaint made, brings another writ in the same vill, against the same tenant, this writ shall abate, although that no plaint was made before; for by Shard, one shall not have two writs of dower unde nihil habet, at the same time, in the same vill, except it be*

on some special matter, as if the tenant purchase other tenements after the former writ, whereof she is dowerable. 11 Ed. 3. Brief 476. contra 39 H. 6. 12.

(b) *Note; View is not grantable in this writ; adjudged 17 Ed. 3. 67. contra. Adjudged 18 Ed. 3. 20.*

of

of which she ought to have dower; then the (c) heir at his full age may sue this writ against the wife, and thereby she shall be admeasured; and the surplusage which she had in dower shall be restored to the heir; but in such case there shall not be assigned anew any land to hold in dower, but only so much of the land shall be taken from her as amounteth to above the third part of all the land of which she ought to be endowed.

And if the heir within age, before the guardian enter into the land, assign to the wife more land in dower than she ought to have, then the guardian shall have the writ of *admeasurement* against the wife, by the statute of *West. 2. cap. 7.* And if the guardian bring the writ, and prosecute it feintly against the wife; yet the heir at his full age, by the same statute, shall have the writ of *admeasurement of dower* against the wife.

2 Inst. 367.

And the writ is *vicontiel*, and shall be sued in the county before the sheriff; and the writ is such:

G (d) *The king to the sheriff, &c. A. the son and heir of B. hath complained unto us, that C. who was the wife of the aforesaid B. hath for dower more of the freehold which was the aforesaid B.'s some time her husband, in N. than she ought to have, and than belongs to her to have; and therefore we command you, that justly and without delay you cause that dower to be admeasured, so that the aforesaid C. may not have more for dower of*

(c) And it seems, that the heir within age shall not have admeasurement of dower. (See 149. B. contr.) of his own assignment. 7 Ed. 2. *Admeasurement* 13. And Note; If the heir of age assign, he shall not have this writ against his own assignment. 6 H. 3. *Admeasurement* 18.

And note; It need not be acknowledged of whom the assignment is held. 17 Ed. 3. 65.

(d) See 13 Ed. 3. *Admeasurement* 17. and yet by *Bract. Li. 4. c. 17.* If she has lands in dower, in divers counties, there it ought to be *coram iusticiariis*. And note; there the tenant

shall have several writs, viz. 1. In every writ of admeasurement, all the lands which she has in the same county shall be named, and admeasured. 2. If she has lands in several counties, there shall be several writs, and several extents of all the lands of which the party died seised, as it seems; yet he shall have one count, and one admeasurement; *sed quere*, how it shall be made. 13 Ed. 4. *Admeasurement* 17. Yet note 7 R. 2. *ibid.* 4. the defendant was to answer, notwithstanding the exception. 7 R. 2. *Admeasurement* 4.

Writ of Admeasurement of Dower.

the inheritance of the aforesaid A. than she ought to have, and than belongs to her to have, according to her reasonable dower, and let the aforesaid A. have of that dower that which he ought to have and belongs to him to have, that we may hear no more clamour, &c. Witness, &c.

And for the guardian the writ is such: A. the guardian of the land and heir of E. hath complained unto us, that C. who was the wife of the aforesaid E. hath more for her dower, &c. (as above, until) so that the aforesaid C. may not have more in dower of the inheritance of the aforesaid heir, than she ought to have, &c. and that the aforesaid guardian may have of that dower, &c. that we may hear no more clamour, &c.

And when the plea is in the county, the plaintiff may H remove it without cause, and the defendant may remove it with cause in the writ, as in a replevin. And if the writ be removed in the common pleas by a *pone*, and process be awarded against the defendant according to the statute, which is summons, attachment and distress, &c. then the sheriff cannot make the admeasurement, but must extend all the land particularly; and return the same into the common pleas, and thereupon the admeasurement shall be made by the justices.

(a) And if the guardian assign for dower, &c. more I than she ought to have, and afterwards grant over his estate, his assignee shall not have a writ of *admeasurement* (b).

(a) Note; These points are well resolved. 1. If the guardian assigns dower, and grants over the ward, the grantee shall not have admeasurement. 2. If the ancestor assigns dower and dies, the guardian of his heir shall not have admeasurement, but his heir shall have it, and so it seems, though the ancestor was within age at the time. (*Vide post.* 149.) 3. Where the king seizes a ward, where he has no right, the ward sued an *ouster le main*, and had it, *salvâ dote*; it seems in such case, the ward shall have admeasurement; *contra* if he had been assignee, or grantee of the king.

2

7 R. 2. *Admeasurement* 4. Note there, where a disseisor endows the feme of more than a third part, the heir shall have an assise.

(b) If on a recovery of the third part in dower, the sheriff assigns a moiety, &c. the tenant has remedy against the sheriff by assise, or he may have a *scire facias* against the sheriff to assign *de novo*. 22 R. 2. *Execution* 165. See 21 H. 7. 29. If an infant assigns for dower more than he needs, he shall not avoid it by entry. See 10 Ed. 3. 31. Dower shall not be admeasured by a writ of dower. 19 Ed. 3. *Quare impedit* 154.

And

And so if the heir within age assign unto the wife more in dower than she ought to have, &c. the guardian in right may have a writ of admeasurement; but if he grant over his estate, his assignee who is guardian in fact shall not have the writ, because it was a thing in action given to his lessor, &c. And the heir shall have a writ of *admeasurement of dower*, for dower assigned in the time of his ancestor.

14 Aff. pl. 4.
Perk. 19. d.
7 H. 2.
Admeasurement
4.

A And if a woman be endowed in chancery by the king, &c. the heir shall have a writ of *admeasurement* against her if she have more assigned to her for her dower than she ought to have.

12 H. 6.
Admeasurement
9.

B And if the guardian assign dower more than she ought to have, the heir during his nonage shall not have a writ of *admeasurement*, but if he himself assign more for dower than she ought to have, &c. then it seems reasonable, that he himself during his nonage have the writ of *admeasurement of dower*.

7 R. 2.
17 Ed. 3. 67.
7 Ed. 2.
Admeasurement
13.
Co. Litt. 39. a.

C (a) But if the wife after the assignment of dower do improve the land, and make it better than it was at the time of the assignment; an admeasurement doth not lie of that improvement. But if the improvement be by casualty of a mine of coals or of lead, which are in the land, &c. which have been occupied in the husband's time, it is a matter of doubt; but she cannot dig new mines; for it shall be waste if she do.

5 Co. 12. a.

D And if the ancestor die seised, and the husband die before he entereth into the land, yet the wife shall be endowed, although her husband had but a possession in law.
7 Ed. 3. 66. 21 Ed. 3. 31. 3 H. 7. 103.

Dr. and Stud.
84.
Co. Litt. 31. a.

But a man shall not be tenant by the curtesy of the wife's land, if his wife had not a possession in deed, except in special cases; as of advowson or rent, where she dieth before the day of payment of the rent.

Perk. 89. 91.
3 H. 7. 5.
21 Ed. 3. 21.

And in that case, if the king's tenant die seised, and the heir die before he enter; then the wife shall be endowed.

N. Br. 8.

(a) 14 H. 3. *Admeasurement* 10. 13 Ed. 1. *Ibid.* 17.

But

3 H. 7. 17.
4 H. 7. 1.

But if the heir enter and intrude upon the king's possession, and afterwards die before he sueth his livery; the wife shall not be endowed by the statute of *Prærogativa Regis*, cap. 12. which is, that if the heir intrude upon the king's possession, *nullum accrescit ei liberum tenementum*, &c.

2 H. 4. 7.
Perkins 96. d.

(b) Where a woman taketh a lease for years of land, she shall not be endowed of the same land during the term. E

41 Ed. 3. 30.

And where the estate which the husband hath during the marriage is ended, there the wife shall lose her dower. As if tenant in tail discontinue in fee, and afterwards take a wife and disseise the discontinuee, or the discontinuee enfeoff him, and afterwards the tenant in tail die seised, his heir is remitted, and the wife shall lose her dower, because the heir is in of another estate of inheritance, than the husband had during the coverture. F

15 E. 3. 21.

And so if a man have title of action to recover any land, and afterwards he enter and disseise the tenant of the land, and die seised, and his heir enter, the heir is remitted unto the title which his ancestor had, and the husband's wife shall lose her dower; for that estate which the husband had is determined, for that was an estate in fee by wrong, and the heir hath the estate in fee which his ancestor had by right.

10 Ed. 3.
Avowry 159.
Perk. 63. d.

(a) If a man make a gift in tail, reserving rent to him and his heirs, and afterwards the donor have a wife, and the G

(b) See accordant, where a feme took the commitment of the guardianship by the king's grant, without any exception of dower, and was barred of her dower during the heir's nonage, 2 H. 4. 7. but if the husband be attainted, and dies, and the feme takes a lease for years of the king's grant of his lands, and afterwards by act of parliament, or by reversal of the judgment, (the heir of the husband being in the king's ward, for that the tenements were intailed,) now she shall have her dower, because it was before, (after) her title of dower commenced; and so if *A.* makes a lease to *B.* for years, and they intermarry, and *A.* dies within the term, the feme shall be endowed. 6 H. 4. 7, 8. Sir *John Cornwall's* case. See *Dyer* 76. a feme tenant at will brings dower of the same lands.

(a) Note; If rent be granted to *I. S.* and his heirs on condition, that if the grantee or his heirs die, his heir within age, the rent shall cease during the

the

the tenant in tail die without issue, the wife of the donor shall not be endowed of the rent, because the rent is extinct, for it was reserved upon the estate-tail which is ended: but although the tenant in tail die without issue, yet his wife shall be endowed, because the land continueth and is not determined as the rent is.

46 Ed. 3. 24.
Finchden.

H If the grandfather die seised, and after the father die seised, and the son have the land, and then the wife of the grandfather be endowed of the third part of the land and die, yet the wife of the father shall not have dower of that third part, because *dos ex dote peti non debet*.

Perkins 62.
45 Ed. 3. 13.
Ant. 148 C.
45 E. Dower 5.
8 Ed. 2.
Entry 75.
3 Lev. 84.

I And if the husband be tenant in common with two others in fee of certain lands, and dieth, his wife shall be endowed of the third part of that land only, with metes and bounds to hold in common, &c.

K And if a wife be endowed of a mill, or of an office, she shall have the third part of the profits thereof assigned unto her, and this shall be a freehold in her of the third part of the mill, &c. *M. 45 Ed. 3.*

45 Ed. 3.
Dower 50.
1 H. 5. 1.
Perkins 67. 8.
Litt 8.
12 H. 4. 1.
Dr. and Stud.
13.

L (b) A woman of the age of nine years or more at the death of her husband, shall have dower of his land. If she be of less age at the death of her husband, then she shall not have dower.

M (c) If a woman be endowed, and afterwards lose by action tried, if she pray in aid of him in the reversion, she shall be new endowed of that which remaineth (d).

N If the husband exchange land, &c. and afterwards die, if the wife have dower of the third part of the land taken

1 Inst. 31. b.
Perk. 63.

the nonage, &c. the feme shall recover dower of the rent against the tertenant, but *cessat executio* during the nonage. 12 Ed. 3. Dower 11. 22 Ed. 3. 19. 10 H. 7. 13. 5 Ed. 2. Dower 153. 10 Ed. 3. 21. Perk. 62, 63. 46 Ed. 3. 24. 12 Ed. 3. Cond. 11.

(b) Co. Lit. 33. a. 7 H. 6. 11. 12 R. 2. Dower 54. of whatsoever age the husband be. See 1 Inst. 384.

(c) See 4 Ed. 3. 25, 36. 50 Ed. 3. 7. Yet there seems to be this di-

versity, if a feme be endowed by a disseisor, she shall have the warranty, &c. but if she recovers the lands only, which are granted over by the heir, she has lost her warranty against the grantee. 7 Ed. 3. 7. 21 Ed. 3. 48. 10 Ed. 3. *Quid juris* 41. (b)

(d) And she shall have election to be endowed of what part thereof she will. See Co. Lit. 31. b. Perk. 63.

(1) I cannot, by the cases cited, find any authority for the doctrine stated in this note. The cases 4 Edw. 3. 25. 86. & 50 Edw. 3. 7. are altogether to other points. The same remark applies to 7 Edw. 3. 7. In 21 Edw. 3. 48. in a *quid juris* claim at a tenant in dower it seemed admitted that before allotment she might require the same warranty of the grantee that she had of the reversioner. In 10 Edw. 3. Fifth. *Quid juris* claim at 41. where the tenant in dower was driven to allotment it was said by the court that she lost her warranty against the grantee & quid is made if she could save it by protestation.

in exchange, she shall not have dower of the other land, &c. which was given in exchange.

If a woman be guardian in socage, and she bring a writ of dower against a stranger, he may plead, that she holdeth other land in socage of which she may endow herself, *de le plus beale*, and then the wife upon that may endow herself of those lands unto the value of the third part, which she ought to have of the other lands which the guardian holdeth, &c. And whether she may endow herself of the *plus beale* unto the value of the third part which she ought to have of her husband's land or no, *Quare*; for some hold, that dower *de plus beale* shall endure but during the minority of the heir who is in ward.

Litt. 10. d.
That he hath a
freehold.
45 Ed. 3. 6.
Candish. acc.
to this here.

[150]
4 Ed. 3. Dower.
117.
6 Ed. 3. 34.
Perk. 445.

The son would have endowed his wife of a reversion of land which one held for life *ex assensu patris*; and it was holden, that it was not good, *M. 4 Ed. 3.* because it was not a chose in possession; whereof a right of dower could be claimed.

22 Ed. 3.
Dower 131.
Perk. 64. 2.

And the writ of dower *ex assensu patris* lieth as well against the guardian as against the tenant of the freehold.

Perk. 84.

If the tenant fore-judge the *mesne*, yet the wife of the *mesne* shall be endowed.

5 Ed. 3.
Dower 149.

If a man recover in value against the husband by a warranty *auncestral*; yet the wife shall be endowed, because the same is by force of the warranty made, and not by reason of eigne title to the land.

The younger son shall not assign dower to his wife *ex assensu patris* of the father's land, because he is not heir apparent.

Perk. 68. 32.
13 Ed. 19.
Dower 161.
1 Ed. 1. Dower
176.

If the husband enter into religion, the wife shall not have dower during his life.

The wife shall have the third part of the advowson for her dower.

43 Ed. 2. 19.
2 Inst. 435.
Co. Litt. 32. a.
2 Wooddes. 24.

If the wife elope from her husband, and remain with the adulterer, she shall lose her dower; but if she remain in adultery upon the husband's lands or tenements, she shall have dower, because the same is not an elopement.

If

- I If the husband be attainted of felony by outlawry or otherwise, she shall lose her dower.
- K If one joint-tenant make a feoffment of his part, his wife shall not be endowed because her husband was never sole seised. 34 Ed. 1. Dower 179.
- L Endowment *ex assensu matris* is good, but *ex assensu fratris* it is holden is not good. 9 H. 3. Dower 19.
8 Ed. 2. Dower 167. contr.
3 H. 6. 4.
And dower *ex assensu patris* after the marriage is good.
- M If a man marry a woman in a chamber, dowerment *ad ostium cameræ* is not good (a). Lessee for life maketh a feoffment in fee; his wife shall have dower against the feoffee, but not against the lessor.
Dowerment *ad ostium ecclesiæ* of the moiety of the land is good.
- N And a woman married in a chamber shall not have dower by the common law, *H. 16 H. 3. Quere* of marriages made in chapels not consecrated, &c. for many are by licence of the bishop married in chapels, &c. And it seemeth reasonable, that in such cases she shall have dower.
- O And in some places the wife shall have the moiety in dower, as in gavelkind. Co. Litt. 133. b.
- P And in some cities she shall have all by the custom which is called free bench, &c. And *Glanvil* saith, that *ad ostium ecclesiæ* a man cannot assign more than the third part in dower, and if he do, the wife shall be admeasured, &c. but less may be assigned by law; yet at this day it seemeth, that the assignment *ad ostium ecclesiæ* of more than the third part is good, and she shall not be admeasured for it. Co. Litt. 36. a.
- Q And the wife shall not be distrained in the lands which she holdeth in dower, for the debts of the husband in his life due to the king, nor in the lands of inheritance of the wife, nor in the lands which she hath by purchase made by the husband to him and his wife, and unto their heirs; and if she be distrained by the sheriff, she may sue forth such writ.
The king to the sheriff, &c. Whereas according to the law and custom of our realm of England women ought not to be

(a) 2 H. 3. Dower 198. Co. Litt. 34. a.

distraigned to pay the debts of their husbands in the lands and tenements which they hold in dower of the gift of their husbands, or which are of their own inheritance, or which they purchased to themselves, and you distrain B. who was the wife of A. in her lands and tenements which are holden in dower of the gift of the aforesaid A. and which were also of the inheritance of her the said B. as we have received information from her complaint: we command you, that you do not cause her the said B. to be distraigned in her lands and tenements which are holden in dower, or which are of her own proper inheritance, or of the purchase of her the said B. to pay the debt of the said A. some time her husband, against the law and custom aforesaid; and the distress which, &c. cause to be delivered to her, &c. Witness, &c.

There is another form of writ in the Register for tenant in dower, which is directed unto the sheriff, commanding him that he do not distrain the wife in those lands which she holdeth in dower, or of her own inheritance, for the husband's debt; but that writ hath these words in the end of the writ, *Yet, so long as the heirs and executors of the testament of him the said A. have sufficient to render to us those debts you do not distrain, &c.* And by these words in the writ it seemeth, that if the heir of the executors have not sufficient of lands or goods to pay the debt, that the wife shall be charged and distraigned for the debt of the husband in those lands. But it seemeth reasonable, that the wife should not be charged or distraigned for the joint purchase made to her husband and her, nor for her lands of inheritance, nor in the lands wherein she hath title of dower before the husband become (a) indebted unto the king; and that the first writ is according to law for those cases. But if the husband be indebted unto the king before she have title of dower, it seemeth to be otherwise.

And there is another writ in the Register for the wife directed to the sheriff, that he do not distrain her in lands or tenements which her husband and she purchased jointly before the husband became indebted to the king; and if he

(a) See 40 Aff. 36. 50 Aff. 5. Dyer 224. Sir William St. Loc's case, acc.
have

have distrained in them, that he deliver them again to the wife.

And the law seemeth in reason to be the same, though the husband were indebted to the king *before*, that, if he and his wife purchase land jointly in fee to them, the land after the death of the husband should be discharged of this debt in the hands of the wife and her heirs.

And there is another writ in the Register for the tenant in dower, directed to the sheriff, that he do not distrain the wife for the husband's debt, because that the heir, who ought to pay the same out of the lands, is within age, and in ward to the king; or because that other tenants who should be charged with the payment thereof, are omitted (a).

And so it seemeth, the lands of the tenant in dower shall be discharged, if there were other lands of the husband to pay the debt. And those writs appear in the Register, fol. 142, 143.

A * And another writ directed to the sheriff, that he do not distrain the wife who holdeth lands in dower of the endowment of her husband for debts in which the husband became debtor to the king after the contract of marriage between him and his wife, nor the lands or tenements which the husband and wife purchased jointly in fee, for the husband's debts, which he became debtor for after the purchase. And she may have such writ out of the chancery directed unto the treasurer and barons of the exchequer, commanding them that they inquire thereof, and if they find the same, that they surcease and discharge the wife with this proviso in the writ; *Provided that those debts be levied upon the executors and heir of the aforesaid A. and upon the tenants of the lands which were his, and which of right ought to be charged therewith, as is just. Witness, &c.*

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* V. 50 Aff. 3.
Br. Charge 34.
The husband and wife before marriage purchase a lease for years, the husband dieth, the lease extended for the king's debt.

(a) See Rot. Parl. 18 Ed. 1. fol. 14. acc.

Writ de Consuetudinibus & Servitiis.

2 Ed. 3.
Droit 28.

THE writ of customs and services is in its nature a **B** writ of right, and lieth sometimes for the lord who hath a fee in the feignory, and sometimes for the tenant in tail of the feignory, or for tenant in dower, or tenant for life, or for him that hath a less estate than a fee, and the writ is close, and not patent, and shall be directed unto the sheriff, and shall be returnable sometimes into the common pleas, at the pleasure of him who sueth the writ, for this writ may be sued in the county before the sheriff by a *justicies*.

And the writ lieth where the tenant doth deforce the **C** (b) lord of the service which he ought to do, or of the rent which he ought to have, as well as of service. And the form of the writ which is returnable in the common pleas is,

The king to the sheriff, &c. Command A. that, &c. he do to B. the customs and services which he ought to do to him (c) for his freehold, which he holds of him in G. as in rents, arrearages, and other things; or thus, in homage, reliefs, and other things; or thus, in suits of court, and other things, and unless, &c. **D**

And if the party were not seised of the services and tenements which he claimeth, but his ancestor, then he shall not say in the writ, *ut in arreragiis, &c.* But omission shall be made in the writ of the services.

And if the writ be sued in the county before the sheriff, **E** then the writ is such :

The king to the sheriff, &c. Justice A. that, &c. he do to B. the customs and right services, &c. (as above) as he can reasonably shew that, &c. that we may hear no more, &c.

And a man may sue several tenants by one writ of customs and services by several *præcipes* in the common pleas, **F**

(b) *Viz.* Against the mesne, but not against the tertenant. 31 *Aff.* 31.

(c) *Note*; If the writ be *debet & solvet*, no view lies *per Shard.* 11 *Ed.* 3. See 18 *Ed.* 3. *View.* 161.

or by one writ and diverse *justic*' in the writ, which shall be directed unto the sheriff, and he shall hold plea upon them. But if the writ of customs and services be sued against several tenants by several *præcipes* in the writ, and returned into the common pleas, then all the *præcipes* shall be put together, thus: *Command A. that, &c. he do to B. &c. and command C. that, &c. he do to D. &c. and command F. that, &c. he do to G. &c.* And in the last *præcipe* shall put this clause, *In rents and other things*, and this word *arrears* shall be left out.

G And when the writ is in the right only, then he shall count of the seisin of his ancestor, and the writ only in the *debet*; but when he counts of his own seisin, then the writ is in the *debet & solet, &c.*

2 Ed. 2. Fitz
Droit 28.

H And disclaimer lieth for the tenant in this writ against the demandant (a).

I And note, that if he say in the writ, *As in rents and arrears, &c.* that these words prove that the demandant himself was seised of the services, and then if he count in such writ of seisin of his ancestors, and not of his own seisin, the writ shall abate; *quod vide 30 Ed. 1. Title Droit.*

N. B. 38. the
disclaimer ought
to be in a court
of record and
not in the
county.

(b) But if he will bring a writ of customs and services of the seisin of ancestors, he ought to leave these words *As in rents and arrears, &c.* out of the writ.

K And a writ of customs and services doth not lie against tenant in frank-marriage, until the fourth degree be past, &c. unless he hath done homage to the lord, &c. for by so doing he is concluded, &c.

L And if a man will bring a writ of customs and services against any tenant, and by his count demand homage, then the writ ought to make special mention thereof, as to say, *As in homage, &c.* otherwise the writ shall abate.

M And if a man holdeth divers manors in several counties by one service, &c. if the lord be deforced or kept from

(a) See F. Droit 28, 49. 7 Ed.
3. 5. b.

(b) 47 H. 3. Droit 52. 31 Ed. 1.
Droit 67.

his services, he shall have several writs of customs and services, for each county one writ, and shall have them returned at one day, in the common pleas, and then he shall count upon them, as his case is, which see in the title of *Droit*, 30 *Ed.* 1.

Droit 73.

And note, that this writ is a *præcipe quod faciat*, &c. and where he demandeth land, then the writ is *præcipe quod reddat*, &c. and in this writ the mise shall be joined, if the writ be brought by tenant in fee of the tenancy, by him who hath a fee in the seigniori. But if the writ be brought by tenant in dower, or tenant in tail, against the tenant in fee-simple, it is a question how the mise shall be joined. But, I think, the mise shall be joined in that case, and the weakness of the estate on the part of the demandant shall not oust the tenant of the plea, which the (a) law giveth him to join the mise; but if the writ be brought against the tenant for life, where the remainder is over in fee, there the tenant may pray in aid of him in the remainder, and then they may join the mise with the demandant, &c. But where the demandant, who hath the particular estate, bringeth the action, although he pray in aid of him in the reversion to join the mise, it is hard to be done, &c. But it seemeth reasonable, that the same law which enableeth him to bring the action, should enable him to join the mise upon the plea of the tenant.

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7 E. 3. 5. b.

Writ of Annuity.

1 Br. Ch. Rep.
304.

A Writ of annuity lieth, where a man granteth A unto another a yearly rent for life, or for years, or in fee out of his lands, or out of his coffers, or to receive from his person yearly at a certain day; now the grantee may sue a writ of annuity for the same, &c. if he

(a) If one recovers in a writ of customs and services, he shall not have a *scire facias* in another writ of execution, but only *distringas*, &c. 18 *Ed.* 3. 23. Execution shall be always had by *scire facias*, notwithstanding (another) execution had before. *Vide infra* B.
10 *Ed.* 3. 15. 17 *Ed.* 3. 29. yet see

be behind at the day of payment, &c. And if it be granted out of the land with a clause of distress, then he may chuse either to distrain for the same, and make it a rent-charge, or he may bring a writ of annuity for the same. But if he bring a writ of annuity for it; if the defendant appear, and the plaintiff declare thereupon, then he cannot distrain for it after. And in like manner, if he distrain for it and avow, then he shall not sue a writ of annuity for the same rent. But if a man grant a yearly rent for life, for years, or in fee, and do not express in the grant that it shall be taken out of any lands or tenements, nor any distress granted for non-payment thereof, then it is merely taken for an annuity; and he shall not have any other remedy for the same, but a writ of annuity.

B (b) And this writ may be sued before the sheriff in the county by justices as well as in the common pleas; and the form of the writ in the county is such:

The king to the sheriff, &c. We command you, that you justice A. that justly, &c. he render to B. one hundred marks, ten quarters of wheat and twenty robes which are in arrear to him, of the yearly rent of one hundred shillings, two quarters of wheat and one robe which he owes to him, as he saith, as he can reasonably shew that he ought to render to him, that we may hear no more clamour, &c.

And the form of the writ in the common pleas is,

Command A. that justly, &c. he render to B. one hundred marks and the moiety of three garments with costly fur, and of two garments with fine linen, which are in arrear to him, of the yearly rent of ten marks, and the moiety of one garment with

or determine pendent the writ, the plaintiff cannot have judgment in the writ, but is put to his action of debt. See 2 H. 6. 8. And note, that *detinue pro quodam scripto de debito*, lies for a deed of an annuity. 15 Ed. 3. Brief 682.

The plaintiff in annuity had judgment to recover damages, and thereupon brought a *scire facias* in B. R. to execute judgment, and good. 24 Ed. 3. Fitz. Mesne.

34 H. 6. 20.

3 H. 6.

Annuity 2.

16 Ed. 3.

Annuity 22.

If a man bring annuity and the same extinguish

(b) Note; By *Salder*, if the defendant shews an acquittance of all arrears, the plaintiff shall recover his annuity, and have always a *scire facias*, or a *fi' fa'* afterwards. 30 Ed. 3. 22. See where nothing was in arrear, but pending the writ, and the

abbot recovered on a plea to the title, and had judgment for the annuity, and also for the arrears, 39 Ed. 3. 38. but in a *scire facias* he shall not recover the arrears pending the writ. 9 H. 12. adjudged in *Diggs's* case.

fur, and of one garment with fine linen, which he oweth to him, &c. and unless, &c.

And note, that in that writ the form is, *Quod ei debet*, **C** where he demandeth other thing than money. And yet in a writ of debt the form is, that he shall not say in the writ, (a) *Quas ei debet*, unless he demand money; for if he demand robes or corn, or such like chattels, the writ shall be, *Quæ vel quas ei detinet*, and not *debet*, &c.

And in debt if a man demand money, and also ten quarters of wheat, then the form of the writ is,

Command A. that justly, &c. he render to B. ten pounds, &c. which he owes to him, and ten quarters of wheat which he unjustly detains from him, &c.

9 H. 6. 12.
& 13.

And if a man have an annuity of twenty pounds to receive of A. and he grant ten pounds of the same to another man to receive of A. A. shall not be charged by that grant, but the grantor only by writ of annuity: but if he had granted ten pounds, parcel of the said annuity, it seemeth then that the grantee might charge him who ought to pay the twenty pounds by a writ of annuity. **D**

And the writ of annuity ought to be brought in the county where the grant was made; but an annuity to receive from a man of religion, or a body corporate, or from a church, ought to be brought where the church or house is, or where the seisin is alleged. **E**

(a) Note also; This writ does not lie after the grant determined by judgment, or otherwise, but debt. 16 Ed. 3. Annuity 22. 15 H. 7. 1. and if the annuity determines pending the writ, it abates, and therefore see (16 Ed. 3. Annuity 22.) 11 H. 4. 34. if the grantee of an annuity for life recovers the annuity, and arrears by writ of annuity, and two years are arrear after the judgment, and then he dies, his executors shall have a *scire facias* for the arrears contained in the judgment; but for the arrears incurred after the judgment, he shall have a writ of debt, and not a *scire facias*; for the annuity is de-

termined, so that he cannot recover it as an annuity, *per cur'*; but it is there said by *Hort.* and *Thirn.* against the opinion of *Hankf.* that where the grantee of an annuity for life with a remainder to him for twenty years, recovers in annuity and dies, his executor shall have a *scire facias* always during the term, because they have the estate continuing in them, during the term; *Quære* of an annuity after the grant determined. 9 H. 6. 16. If one recovers an annuity, and the annuity is after in arrear, and then he dies, his executors shall not have *scire facias*, but debt. 11 H. 6. 38.

And

- F** And the heir shall be charged by a writ of annuity upon the grant of the father, if he have assets by descent. But an annuity shall not be maintainable against the heir by prescription, because it cannot be known whether he hath by descent from the same ancestor, &c. by whom the annuity was first granted. 42 Ed. 3. 5.
acc. 15 Ed. 4.
16.
Vide Co. Lit.
144. b.
and note 2.
13th edit.
Dy. 344. b.
Finch. 68.
- G** And a writ of annuity shall be maintainable against a parson upon a grant made by his predecessor with the assent of the patron and ordinary; and so upon an ordinance made by the ordinary without the patron, if he have *Quid pro quo*. V. 14 H. 4. 18.
- An annuity granted by the bishop with the confirmation of the (a) dean and chapter, shall bind the successor of the bishop.
- H** (b) And if a man grant unto another forty shillings, or a robe, yearly at such a day, &c. after the day he may demand the one or the other, at his election. 8 R. 2.
Annuity 53.
- And an annuity shall be maintainable by a parson against a vicar, upon an ordinance of the ordinary, if he have *Quid pro quo*. 16 Ed. 3.
Annuity 34.
20 Ed. 3.
Annuity 32.
8 R. 2. ib 53.
- I** Upon debate of an advowson between a prebendary and a prior, the ordinary made a composition and ordinance, that the prebendary should have an annuity of twenty shillings, and the prior the advowson for ever, and this did charge the prior in a writ of annuity and his successors, (c) *T. 9 R. 2.*
- K** And in the time of vacation the patron and ordinary may by their grant charge the church for ever, as appeareth in the same year. 1 Ma. Dyer 92.

(a) Or by the ordinance of the commissary confirmed by the bishop, 14 H. 4. 18. on a debate of court before the commissary. See 11 H. 4. 84. and note, the ordinance is to be under seal. 16 Ed. 3. Grants 654.

(b) See accordant 11 Ed. 3. Annuity 27. 29 Aff. 55. But note a diversity, if it be a thing of continuance, as annuity or rent, there he

ought to bring his writ of annuity, or assise, in the disjunctive; *contra* if it be *pro hac vice* only. 9 Ed. 4. 26. per Litt. 13 Ed. 4. 4. 43 Ed. 3. Bar. 19. 3 Aff. 175. 11 Aff. 8. L. 5 Ed. 4. 6. 17 Ed. 3. 73. 29 Aff. 55.

(c) *Viz.* By a release of the right of patronage. 31 Ed. 3. Grants 90.

Writ de Procedendo ad Judicium.

9 H. 6. 33.
If a man grant
10s. parcel of
annuity of 20s.
and in truth
there is no such
annuity, the
grant is void.

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But if it be
granted to receive
out of such a sum,
and there is no
such sum, yet
the same is good
to charge the
person of the
grantor. Vide
annuity 5 l. to
receive in 10 l.
or de 10 l. no
difference.

And if the king grant one an annuity for life or years, **L** he ought to express in the grant by whose hands he shall receive the annuity, as to say, *By the hands of the sheriff of S. or of our bailiff of our manor of S.* and then the bailiff or sheriff shall have allowance upon his patent shewed, if he hath paid the same; and if he have not such words in the grant of annuity, the grant is void, for he cannot sue the king for it, and no person is bounden to pay the same unto him, if he be not expressed and named in the patent, &c. (d) And the process in a writ of annuity is summons, attachment and distress: And for default of distress, &c. Process of outlawry by the new statute made Anno 23 H. 8. cap. 14.

Writ de Procedendo ad Judicium.

THE writ to proceed unto judgment lieth where **B** judges of any court delay the party, plaintiff or defendant, and will not give judgment for him when they ought so to do, &c. then the party grieved shall have this writ directed unto the judges; and the form of the writ is such:

The king to the mayor and sheriffs of London, greeting: Because the giving judgment of the plaint which is before you in our burgh of London without our writ, between A. and B. of a certain trespass to the said A. committed by the aforesaid B. as it is said, hath been long delayed to the great damage of him the said A. as we have received information from his complaint; We command you, that you proceed to give judgment thereupon with as much speed as it may be done, according to the law and custom of the said city. Witness, &c.

(d) And if the defendant makes default after appearance, a *distringas* shall issue *ad audiend' judicium*, 2 H. 4. 1. per cur; yet 29 Ed. 3. 3. a *distringas ad respondend'* issued (to the tertenant) where the defendant made default at the day of *procedendo*, after aid by him had of the king and the

ordinary. 11 H. 4. 6. Judgment on default of the parson at the day of summons to them had and returned. See 8 H. 6. Judgment 262. See a *distringas* against a parson in lieu of a *petit cape*, and if he then makes default, judgment final.

And

C And upon that writ he shall have an *alias* and a *pluries* directed unto him, if they will not proceed, and afterwards an attachment upon that directed to the coroners,

D &c. returnable into the king's bench or common pleas. And it appeareth by the writ that it lieth as well against judges of record as other justices.

E (a) If any man pray in aid of the king in a real action, and the aid be granted, it shall be awarded, that he sue unto the king in the chancery, and the justices in the common pleas shall stay until the writ of *procedendo in loquelâ* come unto them.

1 Ma. Dyer 10;
the Opin. contra.

And then they may proceed in the plea, until it become that they ought to give judgment for the plaintiff, and then the justices ought not to proceed to judgment, until the writ cometh to them to proceed to judgment, which is called a writ *de procedendo ad iudicium*.

7 R. 2. Aid de
Roy 61.

And so it is, if the defendant in a personal action pray in aid of the king, and the aid be granted, now the judges ought not to proceed until *procedendo in loquelâ* comes unto them, and then they may proceed and try the issues joined; but yet they shall not give judgment until a writ cometh to them to proceed to judgment.

27 H. 8. 9.
Eliz. Dyer 101,
257, 258.
V. 28 H. 6. 4.

(a) Note; In all pleas, but in those of dower, where aid of the king is granted, there is a clause *quod non procedant ad iudicium rege inconsulto*. But in a writ of dower, the whole matter shall be discussed in chancery before the writ *de procedendo* comes. 46 Ed. 3. 29. And note; there ought to be in the *procedendo* in dower, an express clause to proceed to judgment; otherwise, if the writ only commands to do right and reason, judgment shall not be given. 26 Ed. 3. 58. A *procedendo ad iudicium* was *quod ad finalem discussionem procedant*, and thereon the judges gave judgment. 29 Ed. 3. 12. 3 Ed. 3. 3. Note; If the tenant in a *præcipe* prays aid of the king, by reason of the warranty, the warranty shall be tried in the chancery, and a writ shall be sent into C. B. to take

the inquest; but if they plead in chancery, and there it appears, that the demandant has right, the king shall not have a writ to C. B. reciting the matter, and commanding them to surcease, &c. for that judgment shall be there given, *Quod teneat inde sine die*, 38 Ed. 3. 14. and per Thorp, there. The right shall not be tried in chancery, but in case where the king has the reversion, the parson may, but does not pray in aid, &c. 38 Ed. 3. 19. and therefore, if the king has a release of the annuity, and pleads it, it shall not be brought into chancery. For the aid is granted only to maintain or support the parson, although he pleads it. 19 H. 6. per Newton. See 13 H. 4. 3.

E 4

And

Writ of Proceeding unto Judgment.

And if the king by his writ certify to the justices that **F** the lands are seised into his hands, &c. then they shall stay until the writ *de procedendo in loquelâ* be afterwards sent unto them.

And so, if it appear to judges of (a) record, that the lands are seized into the king's hands, or if it appear to the court by pleading or shewing of the party, that the king hath interest in the land, or shall lose rent or service, there the court ought to stay until they have from the king a *procedendo in loquelâ*; and if the *procedendo* be directed unto any of the judges to proceed, it is good, although it be not directed unto them all.

And if a man (b) have aid of the king, the *procedendo* **G** ought to make mention of the aid-prayer, and recite the same

(a) *Viz.* In assise, by the testimony of the escheator, or by affirmation of the assise in another writ. See 11 H. 4. 39. But *note*; If the king purchases pending the writ, yet this shall not abate the assise. 11 H. 4. 86. 9 H. 7. 9. and 15. although the party does not pray aid. See accordant 11 H. 4. 71. if it appears of record, as by the king's writ, &c. that the king has (claims) interest; and if it be after verdict, the justices shall not give judgment; *contra* if it be only a nude or bare surmise of the party *debors*; but see 3 H. 6. 6. Aid not to be granted in trespass, without prayer of the party.

See a *procedendo ad iudicium* after the transcript of the record certified into chancery. 13 H. 4. 3.

(b) *Note*; 1. The party cannot demand aid after adjournment of the plea in another term, for it ought to be demanded in the former term, and before plea pleaded. 3 H. 6. 5. *per Martin*. 2. His aid-prayer is, where it is for his advantage to have in value, and then this ought to be specially entered in the course of his aid-prayer, or otherwise he shall not have

in value. 9 H. 6. 4. Sometimes for feebleness of the party's estate, to plead (or pray) it, then *per Cott.* the entry is judgment, &c. *Si rege inconsulto*. See 15 H. 7. 10. where a tenant at will shall have aid of the king thereupon by reason of the temporalities only by those words. See 9 H. 6. 3. *per Cott.* If one prays aid of the king, because of the reversion in him, if he says, that he holds for life, the reversion in the king, it is good, without shewing any deed; and by such plea, the reversion is in the king at his pleasure. 1 H. 7. 29. 11 H. 4. 86. 8 H. 6. 25. So his bailiff shall have aid.

Sometimes it is to try the king's patents, as where the king confirms, &c. then only the judgment is, *Si rege inconsulto*, 28 Aff. 39. sometimes it is for (to preserve) the king's interest, as 1 Aff. 1. and so for a fee-farm rent, &c. due to the king, 2 H. 7. 7. and then in case the king is not to lose, no aid shall be granted, as if one demands land by a title puisne to the king's interest. 35 H. 6. 56. *Note*; The cause of the aid is not traversable. 9 H. 7. 15. 27 H. 8. 28.

same in the writ, commanding them to proceed in the plea, otherwise it is not good.

And if conuſance of plea be granted, &c. in an action real ſued in the common (a) pleas, and afterwards in the franchise, the tenant pray in aid of the king upon a good cauſe, and have the aid granted; the *procedendo* ſhall be granted to them in the franchise.

H And if the king write unto the juſtices to prorogue the aſſiſe becauſe the defendant is in his ſervice, yet the juſtices ought to proceed, and not to ſtay for the ſame.

I And if verdict paſs for the plaintiff in aſſiſe of *novel diſſeiſin* before the juſtices of aſſiſe, and before they give judgment by a new commiſſion, new juſtices are made, then the plaintiff in the aſſiſe may ſue forth a *certiorari* directed unto the other juſtices to remove the record before the new juſtices, that they may proceed unto judgment; and the form of the writ is ſuch :

8. 28. For when the parties come into chancery, if any intereſt can be ſhewn in the king, although it be entered that it was only a ſuſmiſe; ſo if the cauſe of the aid be not ſufficient to prove an intereſt in the king, yet if he can ſhew any other cauſe, that is ſufficient, a *procedendo* ſhall not be granted, till the king's title be diſcuſſed, 8 H. 7. 11. and therefore if aid be granted on ſuch a cauſe, for which it is not of right grantable, and afterwards a *procedendo* is awarded, he ſhall not have aid *de novo* for another cauſe. 9 H. 7. 8, 9. 3 H. 6. 6. adjudged. And *note*; If tenant in fee-ſimple ſays, that he holds for life, the reverſion in the king, whereupon aid is granted, if another title be not ſhewn in the king, a *procedendo* ſhall be preſently granted, and it is not ſufficient there to alledge, that the land is held of the king's manor, which is ancient demefne, for that the tenant there has affirmed the juſdiction of the court by the aid prayed of the king, and it is no miſ-

chief to him, for if he (after) diſagrees to the reverſion, if the plaintiff recovers, he may have a writ of diſceit, 11 H. 4. 86. adjudged, and therefore, without ſome other matter ſhewn, a *procedendo* ſhall be granted. And *note*; if the king be intituled to the reverſion or remainder by purchaſe *de novo*, and not only by plea of the tenant on the aid prayed, no ſearch ſhall be granted further, if aid has been demanded, or if the king has leaſed to the tenant, &c. See 11 H. 4. 86. 9 Ed. 4. 12. and in aid granted in perſonal actions, no ſearch ſhall be for the king. 27 H. 8. 28.

(a) See 8 Ed. 3. *Procedendo* 7. and therefore, where the tenant of a franchise prays aid of the king, and thereupon the plaintiff ſues a reſummons, at the reſummons conuſance was granted again. See 10 Ed. 3. 3. and 21 Ed. 3. 38. yet it was ſaid, that thoſe in the chancery would not grant a writ to the bailiffs of the franchise.

(b) The

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(b) *The king to his beloved and faithful E. greeting: H. hath shewed unto us, that whereas he lately arraigned a certain assise of novel disseisin before our beloved and faithful H. of T. and B. our justices lately assigned to take the assises, &c. by our writ against R. &c. and others, &c. contained, of tenements in L. and although you and the aforesaid B. took that assise according to the law and custom of our realm; nevertheless, by reason of our certain commission made to our beloved and faithful I. of C. and I. of I. of all assises, juries and certificates before our justices whomsoever in the county aforesaid; by our writs arraigned and taken, judgment upon the verdict of the assise aforesaid yet remains to be given, to the great damage of him the said H. wherefore it is expedient and necessary, that the aforesaid I. of C. and I. may be certified upon the record and process of the assise aforesaid had before you and the aforesaid B. We command you, that without delay you send the record and process, &c. touching the same, to the aforesaid I. of C. and I. under your seal distinctly and openly, and this writ; We also command I. of C. and I. that having received and seen the record and process aforesaid, they proceed to judgment aforesaid, according to the law and custom of our realm. Witness, &c.*

And the party plaintiff may sue another writ unto the new justices, that when the record is sent unto them by the old justices, they receive and look upon the record, and then proceed to judgment; and the form of the writ is such:

(b) In an assise, the party alleges, that the lands were seized into the king's hands, and found so by examination, and afterwards a *procedendo in loquela non ad judicium* was granted, and the parol put without day, by the not coming of the justices, and a general re-attachment was sued before new justices in the same county, and all the records delivered to them, and on a plea of *null tort, &c.* the inquest found for the plaintiff, and now a special writ of the king came, rehearsing all the matter, and commanding,

Quod non procederent ad judicium rege inconsulto; and it was adjudged, 1. That by the general re-attachment, the plea of the party was not terminated. 2. For that no cause to give day, *ad sequend' versus regem*, appears before verdict, the verdict was well taken; otherwise, if the justices had asserted it on the record, that it appeared by plea of the party, and examination, that the lands were in the king's hands. 3. That they could not proceed to judgment, without a *procedendo ad judicium*. 9 H. 6. 40.

The

The king to his beloved and faithful R. of C. and I. of I. &c. Justices assigned to take the assises, &c. (as above until) before our beloved and faithful I. B. and you the aforesaid I. of C. our justices lately, &c. of tenements in L. and afterwards, at the prosecution of him the said H. suggesting to us that the aforesaid B. and you the aforesaid I. of C. had taken that assise, and had deferred giving judgment, &c. We commanded the aforesaid B. that he should distinctly and openly send the record and process of the assise aforesaid had before him and you the aforesaid R. of C. together with the original writ, &c. to you the aforesaid R. of C. and I. of I. and our beloved and faithful C. of L. our justices afterwards assigned, &c. and our writ which thereupon came to him, and by our other writ we gave in charge to you and to the aforesaid R. of C. I. of I. and the aforesaid C. of L. that having received and seen the record and process aforesaid, you should proceed to give judgment, according to the law and custom of our realm; and although the said B. hath sent the record and process of the assise aforesaid before you the aforesaid R. of C. I. of I. and the aforesaid C. of L. nevertheless judgment in the assise aforesaid yet remains to be given, to the great damage of him the said A. We therefore willing to speed the matter aforesaid as much as may be according to the law and custom of our realm, and that compleat justice be further done to him the said H. do command you, that you, or two of you, having seen and examined the record and process aforesaid, proceed to give judgment aforesaid according to the law and custom of our realm. *Witness, &c.*

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- A And upon that writ if the justices delay to give judgment, he may have an *alias*, and afterwards a *pluries* directed unto the same justices, *vel causam nobis significetis*; and if the justices upon the writ will not give judgment according to the writ, *Quære* whether the plaintiff may have an attachment against them, because they are justices of record.
- B But see in the Register, among the writs to remove records, many writs to proceed to judgment, &c. of several forms.
- C And if the chaplain of a chauntry bring an assise of *novel disseisin* against another chaplain for lands, and the defendant

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defendant claim the same chauntry by the king's collation and pray that they do not proceed without consulting with the king; now if the defendant cannot shew title in the chauntry for the king, he may have a *procedendo*, directed unto the justices of assise, that they proceed unto the taking of the assise, notwithstanding the allegation made of the king's collation; and he may sue the like writ where the defendant prays in aid of the king in assise by the king's grant, and have that granted; and if he cannot shew matter in the chancery, which proves the king's title, the plaintiff shall have a *procedendo*, that they proceed to take the assise, notwithstanding the allegation made of the king's grant.

And there are divers writs in the Register directed unto justices of assise, that they do not proceed in the assise against the defendant *while he is in the service of the lord the king* in the war, but continue them; but these writs are made by virtue of an act of parliament made for that time, as it seemeth. But if the king certify by his writ unto the justices, that the lands are in his custody, by reason of nonage of any heir, or by an inquisition taken and returned in the chancery, commanding that they do not proceed, the king not consulted with; then it seemeth that the justices ought to stay for the time, although there is not any office found or returned; for they are bound to give credit to the king's certificate, although it be not true, &c. And in attaint for the plaintiff, if he be in war in the king's service, he may have a writ directed to the judges of the common pleas, to continue the attaint, and to adjourn it to a certain day, &c.

And in assise of *novel diff.* if the king send his writ to the justices, reciting that the defendant holdeth the land put in view of the gift of the king by his charter, for life, commanding them that they do not proceed, the king not consulted; now although the tenant will not plead the same, it seemeth, that by that writ the justices ought to stay their proceeding. So if the king recite in the writ, that the tenant is in his service in war beyond the seas, or in *Scotland*, and that he holdeth for life of the grant

grant of the king by his charter, commanding them not to proceed, the king not consulted, but to continue the assise until a certain day, there, it seemeth, they shall stay their proceedings; for the tenant cannot plead it, &c. For if the escheator will say, that he hath seized the lands into the king's hands in an assise brought by any person, in that case, the court shall surcease; *a fortiori* by the king's certificate; and divers such writs are in the Register, &c.

F In assise of lands and tenements, the defendant pleads two or three records in bar to divers parcels of the land which are in the treasury, and the plaintiff denieth those records, the defendant ought to remove the records out of the treasury by a *certiorari* directed unto the treasurer and chamberlains of the exchequer. And if he sue forth such a *certiorari* to the treasurer and chamberlains, and they certify some of the records in the chancery to the king, and moreover certify, that there are other rolls of the same justices, of which they have not yet made full search: upon that certificate made by the treasurer and chamberlains in the chancery, the king shall send his writ unto the justices, reciting this certificate of the treasurer and chamberlains, commanding them to continue that assise, until the next assises, that full search may be made of those records, so that the tenant lose not his lands for failure of the records; and such writ is in the Register.

G And if a man sue an assise before the justices of assise, and the tenant plead bastardy in the plaintiff, upon which a writ is awarded to the bishop to certify at the next assises; and before the next assises the king makes new justices, and the ancient justices certify the record of assise unto the treasury, the plaintiff ought to sue a *certiorari* to remove the record out of the treasury into the chancery by a writ directed to the treasurer and chamberlains, and upon this record sent into the chancery, he shall have a writ of *mittimus* sent unto the justices of assise reciting this matter; and in the end of the writ shall be this clause:

That what is just may be done to the parties aforesaid in the said assise, we send to you the record and process of the plea aforesaid

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aforesaid under the foot of our seal, which for certain reasons we caused to be removed before us in our chancery, commanding you, that having inspected them, and also the certificate of the said bishop hereupon sent before you, as it is said, and having received of the sheriff of the county aforesaid the original writ thereof, which remains in his power, as appears to us by the inspection of the same record and process, you proceed again in the same assise, according to the tenor of the writ and plea aforesaid, and do to the said parties that which of right and according to the law and custom of the realm ought to be done; and we command the same sheriff, that he deliver to you the said writ at your next session in the county aforesaid. Witnesses, &c.

And if a man sue an assise before justices against one A tenant, and in the same assise he name the mayor and commonalty of any town as disseisors, or the bailiffs of any liberty, as disseisors, to the intent that they shall not have conusance of the plea; or that they shall not make the panel; now he may sue a special writ in the nature of an *audita querela* directed unto the justices of assise to enquire of the matter, and to do right unto the parties, and if it be found, it shall abate the assise. *Vide statute 9 H. 4. cap. 5. and see the like statute made for the sheriff, anno 11 H. 6. cap. 2.*

But the sheriff or bailiff ought to shew the matter unto the court, and pray that it be enquired of, &c.

Writ de Quod ei deforceat.

THE writ of *quod ei deforceat* lieth, where tenants in B tail, or tenants in dower or by the curtesy, or for term of life, lose their lands by (a) default in a *præcipe quod reddat* brought against them; then they have not any other remedy, if they were summoned according to the law, &c. but this writ of *quod ei deforceat*: and this writ

(a) And yet the writ or count do 25. on losing by default in a *cessavit*. not suppose any recovery, 18 H. 6. 8 R. 2. *Brief* 931.

is given by the statute of *Westm. 2. cap. 4.* and the writ is mentioned in the statute ; and the form is such :

C *The king to the sheriff, &c. Command A. that, &c. he render to B. who was the wife of C. one messuage with the appurtenances in N. which she claims to be her reasonable dower ; or thus, which she claims to be of her reasonable dower, and that he the said A. unjustly deforceth her, as she says, &c.*

D (b) And if the tenant in frankmarriage bring the writ, then the writ is,

That justly, &c. he render to B. one messuage with the appurtenances, which she claims to be her right and marriage, of which he the said A. unjustly deforceth her, &c.

And if he be tenant in tail, then the writ is,

That he render, &c. which he claims to hold to him and his heirs of his body issuing, and the aforesaid A. unjustly deforceth him.

And for tenant for life the writ is,

Which he claims to hold for the term of his life : or for tenant by curtesy, Which he claims to hold by the law of England.

And the Register is, That this writ for tenant by the curtesy is by equity of the statute. But if the tenant in tail, or such other tenant as hath a particular estate, lose by default where he is not summoned, &c. then he may have a writ of disceit, or a *quod ei deforcat*, as he pleaseth.

E (a) If a man lose by default in an action of waste sued forth against him, he shall not have a *quod ei deforcat* for the verdict which found the waste.

And if a man lose any land by default in a writ of right in a court baron, he may remove that record into the

2 H. 4. 2.
Hankford,
contra.

(b) And it is good, without shewing of whose gift in the count. 29 Ed. 3. 47. 30 Ed. 3. 31. 6 H. 4. 2.

(a) So in waste. 3 H. 6. 29. per Rolf contra. Co. Lit. 355. b. 1 And. 271. 3 Cro. 263. [See 44 Ed. 3. 42. 2 H. 4. 21. 21 H. 6. 56.]

Note : On a recovery by default in a court baron, a *quod ei deforcat* lies in the king's court ; and therefore it is no issue to say *nul tiel record ne recovery*, for that it appears the tenements were lost by default. 2 Ed. 4. 11. 10 Ed. 4. 2. 10 H. 7. 9. 6 H. 4. 3.

com-

41 Ed. 3. 8.
V. 44 Ed. 3. 42.
2 Ed. 4. 11.
30 Ed. 4. 21.
30 H. 4. 7. ac.

common pleas, and then have a *quod ei deforcat* upon that record; and so he shall have the *quod ei deforcat*, although he do not remove the record; but then it seemeth, that the *quod ei deforcat* shall be sued in the common pleas or in the court baron where he loseth the land, as he pleaseth; *tamen quære.*

41 Ed. 3. 5.

(b) And the *quod ei deforcat* lieth against a stranger to the recovery; if a man recover by default, and make a feoffment, the *quod ei deforcat* shall be brought against the feoffee.

46 Ed. 3. pl. 5.
41 Ed. 3. 30.

And if a woman lose by default, and take husband, she and her husband shall have the *quod ei deforcat*: but if tenant in tail lose by default and die, his heir shall not have the *quod ei deforcat*, but a *formedon*; for that is his writ of right.

41 Ed. 3. 30.

Where a woman hath dower assigned her in the chancery for the nonage of the heir, who is in ward to the king; and afterwards the heir at full age sueth a *scire facias* in the chancery against the wife to avoid that endowment, and recovereth in that *scire facias* by default of the wife: now the wife shall have a *quod ei deforcat* in the common pleas upon that recovery.

41 Ed. 3. 30.

And so if a man recover in the king's bench any land by default, upon a *scire facias* sued out on any record which is there, the tenant who lost by default shall have his *quod ei deforcat*, and shall sue the same in the common pleas.

46 Ed. 3. 21.

If two coparceners tenants in tail lose their land by default, they shall join in a *quod ei deforcat*, and yet the default of the one is not the default of the other. *M. 46 Ed. 3.*

And in a *præcipe quod reddat*, if the tenant for life or in tail appear, and after depart in despite of the court, he shall lose his land, and yet he shall have a *quod ei de-*

(b) See 44 Ed. 3. 43. accordant, but it is doubted, 11 Ed. 3. and 16 Ed. 3. For by *Pulton*, if the feoffor recovers in a writ of right, the feoffee cannot tender suit and *devaigne*, &c.

forcean, for that recovery is by his default, because he did not appear when he was demanded.

And if tenant in tail, or tenant for life, after the mise joined in a writ of right depart in despite of the court, he loseth his land, and there he shall not have a *quod ei deforcean*, because judgment final shall be given against him in that case.

- A (a) If the husband and wife be seised of land in the right of the wife, for the life of the wife, and they lose the land in a *præcipe quod reddat* by default, yet they shall have a *quod ei deforcean*, &c.

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Old N. B. 155,
contr
to Ed. 4. 2.
contra.

And if tenant for life loseth his land in a *cess.* brought against him by default, yet he shall have a *quod ei deforcean* by the statute of *West. 2 H. 5. Ed. 3. & M. 9 Ed. 3.*

- B And if tenant by receipt upon the default of tenant for life appeareth, and is received, and pleadeth, and afterwards loseth by (b) action tried: yet the tenant for life shall have a *quod ei deforcean*, for the judgment is given against him by his default.

And if the tenant vouch, and the vouchee will not appear, for which the tenant loseth by default of the vouchee, it is a question whether the tenant shall have a *quod ei deforcean*; for he loseth the land by default, although it be not his own default, for the statute is, *Et cum temporibus retroactis cum aliquis amisisset terram suam per defaultam, non habeat aliud recuperare quam per breve de reple: and there it doth not say, per defaultam suam, but only by default. But after in the statute, it saith, provisum sit, quod de cætero non sit eorum defaulta eis ita præjudicialis, &c.* And by that it seemeth that the tenant ought to make default. But it seemeth that the default of the vouchee, is the default of the tenant, and so default in both: *Quære* of that. But if the tenant vouch, and the vouchee appear and enter into the warranty, and afterwards lose by de-

(a) 4 Ed. 3. pl. 5. contra. 5 Ed. 3. pl. 16. 26. 8 R. 2. Brief 931.

(b) See 33 Ed. 3. *Quod ei deforcean* 17. 8 H. 4 5. 33 Ed. 3. *Avowry* 255. 10 H. 7. 14. or 29. *Nat. B.* 154.

fault; now if the tenant lose by the default of the vouchee, he shall not have a *quod ei deforcat*, because he shall have judgment to recover over in value against the vouchee, by the default of the vouchee, so as he shall have recompence. But if the vouchee do not appear, but make default, then he shall lose the land by the default of the vouchee; but that is not the default of the tenant, and therefore *quere* of that case.

11 Ed. 4. 11.

And if the husband and wife lose by default the land C of the wife, which, she holdeth for term of life, if the husband dieth, she shall not have a *quod ei deforcat*, but a *cui in vita*, for it is as a demise made by the husband. And when he bringeth the *quod ei deforcat*, he counteth that he was seised of the land in his demesne, as of freehold, or in his demesne in tail, without shewing of whose lease or gift he was seised; and he should alledge esplees in himself, &c. and then the defendant should deny the right of the demandant, &c. and shew, that another time he recovered the land against the demandant by formedon or other action, and say in the end of his plea, *that he is ready to maintain his right and title aforesaid by the gift aforesaid, &c. wherefore he prays judgment, &c.* and then the demandant in the *quod ei deforcat* may traverse that title, or may shew matter to bar that title, &c. but he shall not make defence, and then plead in bar, as he shall do in the formedon, &c.

S. 48 Ed. 3. 8.
acc. 2 Ed. 4. 13.
11. acc. the tenant in the quod ei deforcat may plead any bar as in other actions, and then the demandant cannot vouch by the statute of West. 2. cap. 4. but if he make his bar by the first recovery, then he may.
33 H. 6. 46.
quod nota.

Writ de Attornato faciendo vel recipiendo.

THE writ *de attornato faciendo* or *recipiendo* lieth, D where a man ought to do suit at the county, or at the hundred, or wapentake, or other court, and he would make attorney for him to appear at the same court, &c. and if he be in doubt whether the sheriff will admit such a man for his attorney as he maketh; then he who would make such attorney may sue this writ directed unto the sheriff or bailiff of the hundred, commanding him to receive such a man to be attorney for him to appear, &c. and the writ is such:

Vide ant. 25.

The

The king to the sheriff, &c. because it is provided by the common council of our realm, that every free man who owes suit at the county, tithing, hundred, or wapentake, may freely make his attorney to do his suit for him; we command you, that the attorney whom S. shall make in his stead to do suit for him at your county aforesaid, your tithing of A. and B. hundred of C. and D. your wapentake of E. and F. you receive in the place of the said S. for this purpose without difficulty. Witness, &c.

Otherwise unto the bailiff of a hundred, thus :

The king to his bailiffs of the hundred of seven hundreds of Cobham and Bray, greeting : because it is provided by the common council of our realm, &c. who owes suit to the hundred may freely, &c. we command you, that the attorney, &c. at the aforesaid hundred of seven hundreds of Cobham and Bray, you receive in his stead, &c.

Otherwise unto the bailiffs of another lord :

The king to the bailiffs of A. of I greeting : whereas by the common council, &c. who owes suit to the Court of the said lord may, &c. we command you, &c. at the court of your said lord of I. you receive in the place of him the said S. for this purpose without difficulty. Witness, &c.

And by that it appeareth, that the tenant may make attorney by his letters patent to do suit at the Court of his lord. And if the tenant by his letters patent under his seal make attorney for him to do suit for him at the lord's court, or that of the hundred, and the bailiffs will not admit him, &c. then he shall have a writ unto them in this form :

The king to the bailiffs of the dean and chapter of the church of the blessed Mary of Lincoln of C. or of the hundred of S. greeting : because, &c. (as before until) we command you, that the attorney whom S. shall make to be his attorney by his letters patent in his place to do suit for him at the Court of the said dean and chapter of C. or at the hundred of the said dean and chapter of C. you receive in the place of him the said S. for that purpose without difficulty, for this time, of our especial favour, &c.

And for the guardian there is another writ, thus :

The king, &c. We command you, that the attorney whom S. guardian of the land and heir of R. will make to be his at-

torney in his place to do suit for him in the name of the said heir, &c. you receive in the place of him the said guardian for the purpose without difficulty, &c.

Or thus to the bailiffs of the king :

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The king to his bailiffs of the honour of Peverel in the county of N. greeting: Because, &c. we command you, that the attorney whom S. shall make in his place to do suit for him at our court of the honour aforesaid in the county aforesaid, you receive in the place of him the said S. &c.

And if the lands of any tenant be in ward to the king A
for the nonage of the heir because he holdeth other lands of him *in capite*, &c. and his other lords will distrain for suit during the time the lands are in the king's hand or in the hands of his committees, then the king or his committees shall have a special writ unto the bailiffs of the other lords, that they do not distrain the heir, or in the lands, &c. during the time that he is in the king's hands, or in the hands of his committee; and if he have distrained them, that they deliver back the distress again; and this writ appeareth in the Register.

And if the king hath any lands or tenements in ward during the nonage of an infant, and the king in chancery assigns dower unto the wife of the husband who was father to the ward, of lands holden of other lordships; now if the other lords will distrain the tenant in dower for suit at their court during the time the lands are in the king's hands, the wife shall have a writ unto the bailiffs of the other lords, commanding them that they do not distrain her, and recite in the writ all the special matter; and if they have taken any distress, that they deliver it back again.

If a man make an attorney to do suit for him at the B
county, or hundred, or other court, and the bailiffs will not admit him for his attorney; or if the bailiffs admit him for attorney, and afterwards discharge him after the year; supposing that he ought not to continue attorney for the party above one year; or for any other unreasonable cause they discharge him from being attorney for the party; then the party may have a special writ directed

rected unto the bailiffs, &c. commanding them that they receive him for his attorney; and thereupon he may have an *alias*, and a *pluries*, and an attachment against them returnable in the common pleas, or in the king's bench, if they will not admit him for his attorney, or return cause upon the *pluries*, which shall be allowable, wherefore they do not admit him; and the form of the writ is such:

The king to the bailiffs of A. of the hundred of B. greeting: it is shewed unto us on the behalf of C. that whereas by our writ he made his attorney to do suit for him at the aforesaid hundred of your lord of B. in the same hundred before you, and the same attorney by the same writ being admitted for that purpose, hath hitherto done that suit, as the custom is in our realm, you of your own presumption voluntarily insinuating, and pretending cause that the power of such attorney ought not to continue above one year, do not permit him the said C. to do his suit by his attorney aforesaid to the great damage and grievance of him the said C. at which we very much wonder and are moved: and because the virtue of our writs for making such attorneys is not limited, neither is the term limited to the persons who are required for this purpose; we being willing to apply a remedy hereupon, that the said C. or others may not be unduly vexed or aggrieved by the cause aforesaid, command you firmly enjoining that for the future desisting from bringing such wilful and undue vexations and grievances to the said C. or to others for the said cause, you permit him the said C. to do his suit aforesaid by his said attorney without any difficulty whatsoever, according to the tenor of our former writ to you thereupon directed; and so behave yourselves in this matter, that the aforesaid C. by the cause aforesaid be not put in default, nor sustain loss in any respect and that we may be no more solicited thereupon, whereby we ought to put our hand to this in another manner. Witness, &c.

C *Note, That the party may make attorney by the king's writ directed unto the bailiffs, commanding them to receive such person for his attorney; or he may have a writ out of the chancery directed unto the bailiffs, or sheriff to receive any such person for his attorney, that he will*

Writ de Attornato faciendo vel recipendo.

present unto the said bailiffs or sheriffs to be his attorney to do his suit; or he may make attorney by letters patent directed unto the bailiffs without suing forth any such writ.

And if a man sue forth a writ directed unto the bailiffs to admit one for attorney to do his suit for him, and the bailiffs refuse to admit him; now the party who sued forth the writ shall have an attachment against the bailiffs for that refusal, without suing forth an *alias* or a *pluries* directed unto them.

And so the same law is, if the tenant by his letters patent make one attorney to do his suit for him, and the sheriff or bailiff of the Court refuse to admit him for his attorney; upon that refusal, the party shall have an attachment against the bailiff, &c. although he hath not sued forth any writ directed to them before, because they do against the statute, which requireth, that they admit him for attorney whom the tenant will make to be his attorney.

And he shall have the like writ against the bailiffs of any lord, who refuse to admit an attorney to do suit for the tenant in any court-baron, and that writ appeareth in the Register. D

[158] *Writ pro Exoneratione Sectæ ad Curiam Com' vel Baron.*

THIS writ lieth where the tenant holdeth his land to do suit at the county-court, hundred, or other court-baron, or wapentake or leet, and he who ought to do the suit is in ward unto the king, or his committee, and the lord of whom he holdeth by such service, will distrain him to do his suit at his court during the time he is in ward unto the king or his committee; his guardian shall sue this writ unto the sheriff, or bailiffs of the Court, that they do not distrain him, &c. to do suit during the term he is in ward to the king or his committee; and the form of the writ is such; A

To

To the bailiffs of A. of I. greeting : whereas according to the law, &c. we ought not to do suit at the Court of any person by reason of any lands and tenements whatsoever being in our hand or in our ward, and those persons to whom we have committed such wardship ought to hold those wardships during the custody as freely and quietly from all suit, as if we kept them in our own hand ; we command you, that by reason of the lands and tenements of I. deceased, which he held of us in chief, and which are in the custody of R. of our grant, you do not distrain or cause him to be distrained to do suit at the said court of your lord of I. during the custody aforesaid, and the distress, if any, &c.

B *And the like writ shall be for tenant in dower, where she is endowed in the chancery of lands which are in ward to the king, which lands are holden of other lords ; now if the other lords will distrain the tenant in dower to do suit for those lands which she holdeth in dower, she shall have a writ to discharge her, which is such :*

The king to the bailiffs of A. of B. greeting : whereas according to the law, &c. (as above until) or in our ward, and women holding lands or tenements in dower of such wardships ought to hold them as freely and quit from all suit during those wardships, as if we kept the said lands and tenements in our own hand ; we command you, that you do not distrain M. and R. his wife, by reason of the lands and tenements which were H's in F. which he held of us in chief, and which the said R. and M. held in dower of him the said R. of the gift of the aforesaid H. her former husband, and of the inheritance of the son and heir of A. within age being in our wardship, to do suit at the court aforesaid of your lord, during our wardship aforesaid, and the distress, &c.

And if the heir be in ward of the king and also his lands, and afterwards the tenants paravail who hold of the heir are distrained by other lords, of whom the heir holds his lands, to do suit unto the lord's court, those tenants shall have a writ directed unto the lord's bailiff to discharge them of the suit ; and the writ is such :

The king to the sheriff of Nottinghamshire, greeting : Whereas according to the law and custom of our realm no person who holds of heirs being within age and in our custody,

is bound to do suit at the county, hundred, wapentake, or other court, for lands and tenements of those heirs being in our hand, during the custody aforesaid; we command you, that you distrain not or cause to be distrained the tenements of the abby of Derley of certain lands and tenements of Roger, the son and heir of Roger Bellers deceased, in Chilwell, (which he held in chief of Lord Richard lately king of England, because the lands and tenements of the same heir in the said town, are in our own hand by reason of his minority) to do suit at the wapentake of B. during the custody aforesaid.

And if the heir and his lands be in the king's ward, for C lands holden of the king *in capite*, and afterwards the other lords, of whom the heir holdeth parcel of his lands, will distrain for any service or rent to them due, then the king or his committee may sue a writ for them to surcease from such distress; and the writ is such:

The king to the bailiffs, &c. Whereas heirs being within age and in our ward (a) ought not, nor are bound to do any services during those wardships, according to the law and custom of our realm; we command you, that the distress which is made by the abbot of W. upon the tenant of the heir of William of W. (who held of us in chief) being within age and in our custody, for homage, fealty and other services to be done by the said heir to the said lord, you do wholly supersede during the custody aforesaid, and the distress, if any, &c.

And also the tenant in dower shall have such writ, if the bailiff of other lords will distrain her, for the relief of the heir, or other services, during the time that the heir's lands are in the king's custody, or in the custody of his committee. And it seemeth, that he may sue this writ directed unto the lord himself, as well as to the bailiffs, or unto them both,

(a) *Note*, All the services are gone during the king's seisin; for the mesne seigniories are suspended by the king's seisin, who is lord paramount, *Bract. lib. 1. fol. 87.* but it seems that the rent (remains) although the distress be suspended; but the lords must sue to the king by petition, for the surplussage above that which they are

charged to the king, to be recovered. 24 *Ed. 3.* 24. 39 *Aff. 5.* 13 *H. 7.* 15. *per Keb.* where he may distrain at full age of the infant, and after livery sued, for all the arrears, above that for which they were charged to the king. See *Stamf. Prærog. 9.* 39 *Ed. 3.* Relief 1. 26 *H. 8.* 8.

D *Note*, That if a man holdeth of another to do suit to his mill, &c. if he do not the suit, he shall have a *seſſa ad molendinum* againſt him, and by the ſame reaſon, if a man hold of another lord to do ſuit at his court in the manor of *D.* if he do not the ſuit, the lord may have a writ of *ſeſſa ad curiam ſuam faciend'* as well as the other writ. But yet there is no ſuch writ in the Register, be-
 cauſe he may diſtrain (*b*) for that ſuit, and ſhall not have any other profit, but only appearance in his Court. But in the other caſe *de ſeſſa ad molendinum*, he ſhall have other profits by the ſuit, the toll of the grain he ſhall grind there, and for that profit it ſeemeth the action of *ſeſſa ad molendinum* was given, and for the ſuit of the Court but only a diſtreſs; *tamen quære*.

[159]

A If the king have lands by forfeiture or eſcheat, and leaſe them for life, at will, or in tail, and if the lord of (*c*) whom the lands are holden diſtrain the king's committee or leſſee for ſuit or other ſervices, he ſhall have a ſpecial writ unto the lord's bailiff to ſurceaſe, &c.

V. 31 H. 8. 25.
 33 H. 6. 7.
 Stam. 38 H.
 3 Ed. 3. 10.
 45 Ed. 3. 6.

And if lands deſcend unto divers coparceners, for which one ſuit ſhall be done at the lord's court, if parcel of thoſe lands come into the king's hands, then he ſhall have a ſpecial writ to diſcharge him of the ſuit (*d*) for the time they ſhall be in the king's hands; which ſhall be ſuch:

The king to the ſheriff, &c. greeting: Whereas it is provided by the common council of our realm, that if any inheritance from which only one ſuit is due to ſeveral heirs, &c. or devolves to others by ſale, &c. then only one, &c. hath been accuſtomed to be done, and a certain inheritance (which was H's of B. of the barony of B. from which barony only one ſuit is due to your ſaid court) is devolved by ſale, as we underſtand, to our beloved

(*b*) See 6 H. 3. *Voucher* 273. *Seſſa ad hundredum* brought, *quæ facere debet & ſolet*.

(*c*) And *Note*; if the king has a tenancy by forfeiture or purchaſe, if he does by covin alien them to hold of himſelf, the lord may ſue by petition and have a *ſcire facias* againſt the patentee to repeal the patent, and to re-

ſeiſe the land, and then it ſhall be granted, *tenend' de capitali domino*, 20 *Aſſ.* 124. 46 *Ed.* 3. *Petition* 19. 17 *Ed.* 3. 59. but this is intended of an alienation in fee. 3 *Ed.* 3. 10.

(*d*) *Quære*, if *A.* holds lands charged with ſuit to the hundred by preſcription, and enſeoffs the king of parcel, if all the ſuit is gone?

and

Writ pro Exoneracione Seflæ ad

and faithful W. of H. and I. son and heir of R. of S. being within age and in the custody of our beloved and faithful R. of N. by our commission. And we, according to the law and custom, &c. ought not to do any suit by reason of lands and tenements being in our hand and in our ward, and those to whom we have committed such wardships ought to hold them as freely and quit from all suit, as if we kept the same in our own hand; we command you, if it be so, that then you do not distrain the said W. of H. to do suit at your county aforesaid for the lands and tenements of the said barony during the wardship of the said heir abovementioned, &c.

And if the wife be tenant in dower of any land, she shall not be distrained to do suit for that land which she holdeth in dower, if the heir have sufficient land in the same county to be distrained for the same. And if she be distrained, then she shall have such writ :

The king to the bailiff of the hundred of N. greeting, &c. B Whereas according to the law and custom of our realm women tenants in dower, ought not to do suit at the hundred or the Court of any person for their lands and tenements which they hold in dower; we command you, that you do not distrain A. who was the wife of B. to do suit at the hundred aforesaid for the lands and tenements which she holds in dower, and the free tenement which was her said former husband's, contrary to the law and custom of our realm, so long as the heir of the aforesaid B. hath other lands and tenements in your bailiwick, whereby he may be distrained to do the suit for the dower aforesaid, and the distress, if any shall be made, &c. that you cause it to be delivered without delay, &c.

Plowd. Com.
240. acc. 45 Ed.
3. 23. Dyer 240.
b. St. Marl.
c. 9.

And if lands descend to many coparceners, whereof C one suit ought to be done for the whole land; now if the land be holden of the king, then all the coparceners ought to do the suit as well after partition as before : but if the land be holden of another lord, then that coparcener or his feoffee, who hath the part of the eldest sister, shall only do the suit; and if the lord will distrain the other coparceners, then they shall have a writ against him, directed to him or his bailiffs, to discharge them of that suit, and distress taken, &c. and the writ shall be such :

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The king to C. or to the bailiffs of C. greeting, &c. Whereas by the common council, &c. it is provided, that if any inheritance, from whence one suit only is owed, devolves to several heirs, coparceners of the same inheritance, or otherwise by sale or other manner, only one suit is to be done for that inheritance as before hath been accustomed to be done, and a certain inheritance which was A.'s in N. (for which one suit only was due to your court of I. or to the Court aforesaid of your lord of I.) is devolved to A. B. and C. co-heirs and parceners of the inheritance aforesaid, as we have received information: we command you that you do not distrain the aforesaid A. B. and C. severally to do divers suits for their portions of the said inheritance at your court of I. or at the Court aforesaid of your lord of I. contrary to the form of the provision aforesaid, and the distresses, if any, &c.

D And if the tenant in feoff divers persons of lands, for which one suit ought to be done, if one of the feoffees do the suit, &c. if the other feoffees are distrained to do suit for that land, they shall have such writ, which writ is in the Register; and the writ is given by the statute of *Marlebridge cap. 9. (a).*

Perk. 130.
Post. 162. D.

And so if the heirs or feoffees should do the suit at the county, hundred or wapentake; if one do the suit, all of them are discharged; and if they be distrained, they shall have that writ.

24 Ed. 3. 34
Post. *ibid.*

And so if one coparcener make a feoffment of her part, or a man be tenant by the curtesy of one part of the land, (b) yet one suit only shall be done by one coparcener, by her who hath the eldest part. And if they be joint feoffees, then by one of them, as they can agree amongst themselves, &c. and if he sue such writ, and he be distrained, then he shall have an attachment against the lord, or the

(a) See Register 176. accordant. 11 Ed. 3. *Avowry* 10. by Stone and Thirn contr. *Parn.* for suit to the hundred is not only in respect of the resistance, as suit to a leet, &c. is. Note Register 175. *cum secundum legem & consuetud.*, &c. and *ibid.* 176. *cum de comuni concilio regni*, &c.

(b) See accordant 24 Ed. 3. 73. yet contra of jointenants. Post. 162. D. See 2 Ed. 2. *Avowry* 179. If lands descend to two parceners, and the elder does homage, this discharges both; and yet if the elder alien, the lord may distrain on the younger for the homage.

bailiff to whom the first was directed, to answer that contempt, in which writ he shall recover his damages, &c.

But if there be two coparceners of land, for which **E** one suit ought to be done, and the eldest sister will not do the suit at the lord's court; then the lord may distrain the other (c) coparcener, as well as the eldest coparcener, for that suit, and if the coparceners be distrained, then they shall have a writ against the eldest sister to compel her to do the suit; and the writ shall be such:

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The king to the sheriff, &c. If B. and C. shall make you secure, &c. then summon, A. that she be, &c. to shew wherefore, whereas by the common council, &c. that if any inheritance, &c. (as above, until) hath been accustomed to be done, and that she who hath the principal part, &c. and a certain inheritance, &c. (as above, until) is devolved to A. B. and C. co-heirs and parceners of the inheritance aforesaid, as we have received information, and the aforesaid A. hath part of that inheritance; and the aforesaid B. and C. are ready to contribute to do the suit for their portions, she the said A. refuses to do that suit for herself and the said B. and C. at the court aforesaid, to the great damage of them the said B. and C. and against the form of the provision aforesaid, as it is said: and have there the summoners, &c.

18 H. 6. 13.
Marl. c. 10.

(d) And if a man have lands in divers places in the **A** county, and in several leets, &c. or hundreds, and he is constrained

(c) And shall make avowry on her only, and not on both after a partition by feoffment, &c. 24 Ed. 3. 73. See 2 Ed. 2. Avowry 184. and see the case, 24 Ed. 3. 34, 73. where the eldest aliens her part to one, and the younger her part to another, and the avowry made on the alienee of the elder only for suit, &c. and so it may be on the alienee of the younger for other suit; yet suit made by one discharges both: and note *per cur.* he cannot avow on both in fee after such severance.

(d) Note; A thing presentable in the leet, shall not be redressed in the

torn, without a special prescription, because they are equal jurisdictions, though at first the whole jurisdiction was in the torn; and is superior still where the lord of the leet is peccant, 21 Ed. 3. 314. or where the lord of the leet does not remedy an abuse, 20 Ed. 3. 85. 29 Ed. 3. 21. or in the eyre, or by commission; *contra* 41 Ed. 3. *per Belkn.* 10 H. 4. 4. an enquiry in a *quo warranto*; viz. he who claimed a leet within a town, whether four men and the bailiff were resistant to the leet or the torn, or the hundred where the town is. See 18 H. 6. 12,

constrained to come unto the leet or the sheriff's torn, where he is not dwelling or conversant, but is dwelling within the precinct of any other leet or hundred, &c. then he shall have a writ unto the sheriff for discharging him from coming to the sheriff's torn, or hundred, or leet, or other place, than in the leet or precinct of the hundred where he dwelleth; and the writ is such:

The king to the sheriff of Worcestershire, greeting: Whereas it is provided by the common council of our realm, that they who have tenements in divers hundreds have no necessity to come to the sheriff's torn, except in the bailiwick wherein they shall be dwelling; we command you, that you distrain not S. to come to your torn in our hundred of I. contrary to the form of the provision aforesaid, &c.

And see the statute of *Marlebridge, cap. 10.* for this, by which it appeareth, that the sheriff ought to hold his torn as he hath used in the time of *Richard the First, and John, kings of England.*

And by the writs it seemeth, that he shall hold his torns in every hundred, &c. and if the sheriff distrain against that statute any man, then he may sue that writ upon the statute, &c. and if he distrain him after; then he shall have attachment against the sheriff, &c. and the writ is such:

The king to his coroners in the county of Lincoln, greeting: If A. shall make you secure, &c. then put, &c. B. our sheriff of the county aforesaid, that he be, &c. to shew wherefore, whereas by the common council, &c. (as above, until) dwelling; he the said B. or he the said sheriff hath distrained the aforesaid A. to come to the torn of him the said sheriff of our hundred of I. contrary to the form of the provision aforesaid, and against

13. the inhabitants of a leet shall be compelled to come to a torn. But *per cur.* one shall not be compelled to come to two leets, although one be greater and the other less; for *per cur.* the sheriff's torn is no leet; for assize of bread and beer shall be presented in a leet, but not in a torn; and those things

which are omitted in a leet, shall be presented in the torn; and see there that the same land may be within the precincts of two leets; and agree that *A.* may have a leet at one time of the year, and *B.* at another time of the year, for both make but one leet.

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the form of our mandate to him, before, thereupon directed, as it is said: and have, &c. and in the mean time cause to be delivered the beasts of him the said A. taken on that occasion. Witness, &c.

And if a man have lands within the precinct of several B leets, or in one county, and he dwell within the precinct of one of them, and he be distrained to come unto another leet (a) within the precinct of which he dwelleth not, then he shall have a writ unto the sheriff, or bailiffs of the Court, &c. that they do not distrain him to come to that leet, within the precinct whereof he dwelleth not; and the writ is such:

The king to his bailiffs of the honour of C. in the county of Lincoln; or, to the bailiff of A. of B. in the county, of, &c. greeting: Whereas by the common council, &c. that they who have lands in divers hundreds have no necessity to come to the view of frank-pledge, except in the bailiwick where they shall be dwelling; we command you, that you distrain not A. to come to the view of frank pledge in your court, or in the court of your lord of the honour aforesaid in the county aforesaid, against the form, &c. and the distress, if any, &c.

And it appeareth that if the party be distrained, after that he hath sued the writ directed unto the sheriff, or bailiffs, that they do not distrain him, that he shall have an attachment against them: but it seems reasonable, that first he have an attachment against the sheriff, or against the bailiffs, who distrained him to come to the leet in the hundred where he is not dwelling, if he be dwelling within the precinct of another leet, because the statute of *Marlebridge* is a prohibition in itself, and he who doth contrary to the statute doth wrong unto the party, upon which he may have an attachment, without suing forth any writ.

Br. Leet 39.
Britton 41.

(a) Lands may be held by suit to a hundred by prescription or special grant, and he may be distrained, and also amerced for it, as it seems. And *Note*; if land held by suit at the hundred, come to several hands, several suits shall be made, for it is not with-

in the statute, *per Parning*, which *Stone* denied: also by *Parning*; if both parcels return again to one hand; yet two suits are due, and he shall serve twice and be amerced twice. But *Shard* held the contrary. 11 Ed. 3. *Aroury* 101.

Note,

C *Note, That men or women who have entered into religion, ought not to come unto the sheriff's torn, or unto the leet of any other without great cause; and if they be distrained to come, they may have a writ out of the chancery to discharge them, which shall be such :*

The king to the sheriff, &c. Whereas by the common council, &c. that men who have entered into religion have no necessity to come to the sheriff's torn, &c. or thus, to the view of frank-pledge, unless their presence be required for some special cause; we command you, that you distrain not the abbot of I. to come to your torn; or thus, to the view of frank-pledge in your hundred of F. against the form of the provision aforesaid, and the distresses, &c.

And the abbot shall have such a writ unto the bailiffs of another lord, that they do not distrain him to come to his leet.

And by the common law, parsons of churches shall not be compelled or distrained to come to the king's leets, or to the leets of other lords of the lands annexed to their churches, and if they be distrained so to do, they shall have such writ :

The king to the sheriff, &c. Whereas according to the custom of our realm, parsons of churches, by reason of their lands and tenements annexed to their churches, ought not to come to the view of frank-pledge in our court, or the Courts of any other persons whomsoever; we command you, that you distrain not C. parson of the church of I. by reason of his lands and tenements annexed to the church aforesaid, to come to the view of frank-pledge in the hundred of N. contrary to the custom aforesaid, and the distresses, &c.

And clerks who are not parsons, nor have benefices, shall not be distrained or compelled to come to torns or leets, but they shall have a writ to discharge them, thus :

The king to the sheriff, &c. Whereas ecclesiastical persons have no necessity to come to the torn of the sheriff or to the view of frank-pledge (unless their presence be required for some special cause) according to the form of the provision made by the common council of our realm for men of religion in the like case; therefore we command you, that you distrain not S. parson of
the

the church of N. or chaplain, to come to your torn or to the view of frank-pledge of us in the hundred of I. contrary to the form of the provision aforesaid, and the distress, if any, &c.

Br. Leet 34.

Wherefore a man is said outlawed.

And women are not compellable or distrainable to come to the sheriff's torn or to leets; and if they be distrained, they may sue such a writ as a priest may sue, and thereupon an *alias*, a *pluries*, and attachment, &c. and because that women are not sworn in leets as men who are of the age of twelve years, or more, are; it is said, that when a woman is outlawed, that she is waived and not outlawed; for she was never sworn to the law, &c. but a man is said to be outlawed, because he was sworn to the law; and now for his contumacy he is put from the law, and said to be outlawed, as it were, *extra legem positus*; and a woman is not so, for she was never sworn to the law.

And by the rule of the register, two women may sue this writ unto the sheriffs or bailiffs of the leet, that they do not distrain them to come to the torn or leet, &c.

See before 14 good cases for their privileges.

And if the sheriff distrain the tenants in ancient demesne to come unto the leet or sheriff's torn, they may have one writ for them all directed unto the sheriff, commanding him that he do not distrain them, &c. to do any suit at the leet or torn; and this writ shall be sued in all their names, if they will, as a *monstraverunt* shall be sued: or any of them may sue the writ in his own name, if he be distrained to do such suit; and the writ is such:

The king to the sheriff, &c. The men of the manor of D. which is of the ancient demesne of the crown of England, have shewed unto us, that whereas they ought not to come to the torn of the sheriff or to the view of frank-pledge out of the liberty of the said manor, unless they themselves or their ancestors, the men and tenants of the same manor, have been accustomed to come in times past; nevertheless you grievously distrain our men aforesaid to come to the torn in K. or to the view of frank-pledge in our hundred of K. contrary to the custom hitherto used in the same manor and do very much unjustly disquiet them upon that occasion, to the manifest prejudice and grievance of them the said men and tenants: and because we will not have any

any injury done to the men and tenants aforesaid, we command you, if it be so, that then you wholly desist, for the time to come, from bringing such distresses upon them for the cause aforesaid, and permit them to use and enjoy their customs which they have hitherto reasonably used, without interruption or challenge, that further complaint may not come to us. *Witness, &c.*

D And if the sheriff distrain a man to do suit to the hundred or wapentake oftner than twice in the year, to present things appertaining to that leet, then he shall have a writ upon the statute of *Magna Charta* directed to the sheriff, which shall be thus : Mag. Ch. p. 814

The king to his bailiffs of the wapentake of R. greeting : Whereas in the great charter of the liberties of England it is contained, that no sheriff or his bailiff shall keep his torn in the hundred but twice in the year, and no where but in due place and accustomed; that is to say, once after Easter, and again after the feast of Saint Michael; and now from the complaints of the men and tenants of the abbot of C. we have received information that you, contriving to aggrieve them the said men and tenants in this behalf, do now again grievously distrain them to come to our certain wapentake aforesaid, to present there those things which belong to the view of frank-pledge, to the great damage and manifest prejudice of those men and tenants and contrary to the tenor of the great charter aforesaid; we willing the same charter to be inviolably observed in all things, command you, that you in no wise distrain the said men and tenants to come before us to the wapentake aforesaid, to present those things which belong to the view of frank-pledge, contrary to the tenor of the charter aforesaid, and the distress if any, &c.

And by this it appeareth, that he shall not distrain to come to the hundred to present a thing appertaining to the leet but twice in the year; but to do suit at the hundred, to do that which appertaineth (a) to the hundred court,

(a) Note; A hundred is no more than a court-baron, and the suitors there are judges. 6 Ed. 4. 3. *per custom*; and yet for suit to a hundred-court, one cannot distrain except by pre-
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scription, and in the lands charged with the suit. 5 Ed. 3. 52. 11 Ed. 3. *Avowry* 101. but he may be amerced by the suitors for default of suit, and for such amercements their cattle may
G

Writ de Quarentina habenda.

court, he may distrain them several times to do the suit, and they shall have no remedy, because suit at the hundred is from three weeks to three weeks.

Writ de Quarentina habenda.

THE writ of *quarentina habenda* lieth where a man E dieth seised of any messuage and lands, &c. and immediately after the death of the husband the heir, or he who ought to have the lands after his death, will put the wife out of the messuage, &c. then the wife shall have this writ; for by the statute of *Magna Charta*, cap. 7. the wife shall remain in the capital messuage after the death of her husband by forty days, if it be not a castle; and the writ is *vicontiel*, and shall be directed unto the sheriff, and he shall hold plea thereof; and the writ is such:

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Quere, if an infant may keep the possession during the time of quarentine, by force of the statute of 8 H. 6. 4 & 5 Ma. Dyer 161.

The king to the sheriff, &c. or to his bailiffs of S. greeting: We have received information by the complaint of B. who was the wife of D. that whereas it is contained in the great charter of the liberties of England, that widows shall remain in the capital messuage of their husbands for forty days after the death of their said husbands, unless those messuages be castles within which time their dowers shall be assigned to them, and that in the mean time they shall have reasonable eslovers of the goods thereof; I. of C. violently ejected her the said B. immediately after the death of her aforesaid husband from the capital messuage which was his the said D.'s in H. (although it is not a castle, and her dower was not assigned to her) and did not permit her to take her eslover of the goods thereof, to the great damage and grievance of her the said B. and contrary to the tenor of the charter aforesaid: and because we will not that the aforesaid B. be injured in this matter, we command you that, having called before you the parties aforesaid, and having heard the reasons to be alleged by each of them, you cause to be done to her the said B. full and speedy justice thereupon, according to

may be distrained, &c. 2 H. 4. 24. 11 H. 4. 89. See 11 Ed. 3. *Avowry* 101. per *Parring.*

the

Writ de Quarentina habenda.

1562

the tenor of the charter aforesaid that for want of justice further complaint do not come to us. Witnesses, &c.

- A And upon this writ the sheriff shall award process against the party to come and answer it, and shall not stay until the county court be holden; for this writ is a commission unto him, and upon the same he shall immediately make process against the party to answer, &c. within two or three days, according to his discretion, and thereupon to proceed as justices do upon a commission of *oyer and terminer*, &c.

Nota by Newton. The woman shall not have meat and drink; for the statute doth not extend to it. But Fitzherbert in abridging the case queries, if she may not kill any things for her provision, if there be not any provision in the house.

Writ of Contribution.

- B THE writ of contribution lieth where there are tenants in common, or who jointly hold a mill *pro indiviso*, and take the profits equally, and the mill falleth into decay, and one of them will not repair the mill; now the other shall have a writ to compel him to be contributory to the reparations; and the writ is such:

Hardr. 209.

The king to the sheriff, &c. If A. shall make you secure, &c. then summon, &c. B. and C. that they be, &c. at W. &c. to shew wherefore whereas they the said A. B. and C. jointly hold a certain mill undivided in N. and the issues thence coming by equal portion partake, and are bound to the reparation and support of the same mill, and the said B. and C. (although they receive the proportion of those issues happening to them) refuse to contribute to the reparation and support of the said mill, to the great damage of the said A. as he saith: and have there the summoners and this writ, &c.

- C And if there be three or four coparceners of lands, and the eldest sister do the suit to the lord of whom the lands are holden for all the coparceners, and the others will not allow her their proportion for her charges and losses for the same suit; that coparcener who did the suit may have this writ of contribution; and the writ is such:

The king to the sheriff, &c. If B. shall make you secure, &c. then summon A. and I. his wife, and R. and F. his

G 2

wife,

Writ of Contribution.

wife, that they be before our justices, &c. to shew wherefore, whereas by the common council, &c. that if any inheritance, &c. (as before, until) and she who hath the eldest part of that inheritance may do the suit for herself and her parceners of the same inheritance, and that they the said parceners shall contribute to the doing that suit, and a certain inheritance which was C.'s in R. (for which one suit only is due at the hundred of I. of N.) is devolved to her the said B. and the aforesaid A. and I. R. and F. parceners of the inheritance aforesaid, as we have received information, and the aforesaid B. who hath the eldest part of that inheritance, doth the suit at the hundred aforesaid, or at the Court aforesaid, for herself, and the aforesaid A. and I. R. and F. her parceners, they the same A. I. R. and F. refuse to contribute towards doing that suit, to the great damage of her the said B. and against the form of the provision aforesaid, as she saith: and have, &c.

And if there be many coparceners, and the eldest do the suit, and the other coparceners agree with the eldest for their proportion; now the writ of contribution shall be brought against the others, who would not contribute, &c. and if many be infeoffed of land, for which one suit ought to be done, &c. (a) now if they agree among themselves, that one of them shall do the suit, and that the others shall contribute unto him, if he do the suit, and afterwards the others will not allow him for that suit according to their proportion then he shall have the writ of contribution against them, and the writ shall mention the agreement, &c. and if they cannot (a) agree, then the lord

(a) And so it also seems of several feoffees, for the statute of *Marlebridge* does not limit in such a case who shall do the suit.

(a) See *Kelw.* 131. & *ibid.* 30 &c. and yet the other joint feoffees shall make but one suit. See 45 *Ed.* 3. 23. *per Skipw.* If land be charged to a suit real, as to a hundred or wapentake, or other real service, if the

land out of which the suit issues comes to several hands, so that each of them knows his severalty, each of them shall make several suits. See 11 *Ed.* 3. *Avowry* 101. If land be charged with suit to a hundred, which is afterwards severed into parcels, several suits shall be made; yet see before 139. that the statute of *Marlebridge* extends to suit at the hundred, and

lord shall distrain them all for all their suits, if the suit be not done; but if one feoffee of his own will do the suit for them all, without any agreement for the same made between them, the lord cannot then distrain the others for the suit; for as to the lord, it is not material whether there be any agreement between them or not; but between the feoffees, he that did the suit shall not have the writ of contribution against his companions, without agreement thereof made betwixt them. But if one jointenant make a feoffment in fee of his part, his feoffee shall do a several suit by himself. But the other jointenants shall do but one suit by the statute of *Marlebridge cap. 9.*; but every tenant in common shall do several services and several suits. And the process in this writ is summons, attachment and distress.

Ant. 159.

Writ de contra Formam Feoffamenti.

St. Marl. c. 9.

E **T**HE writ *de contra formam feoffamenti* lieth, where a man infeoffed another before the statute of *quia emptores terrarum*, (b) to hold of him by homage, fealty, and rent by deed, and afterwards he would distrain for suit or other services to be done unto him; he who was infeoffed, or his heir, shall have this writ of *contra formam feoffamenti*, &c.

5 Ed. 4. 85. Br.
cont. formam
feoffamenti

F And this writ may be directed unto the lord himself, or unto his bailiffs, commanding them that they do not
A distrain him against the form of his grant; and this writ is a prohibition in itself. And if the lord and bailiffs do

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and by *Shard* and *Stone*, when the lands come afterwards into one hand, there shall be but one suit; but by *Parning* there shall be two suits, and two amercements. See the *Register* 177. *Rex ballivis*, &c. *cum de communi concilio*, &c. *provisum sit quod si plures hereditates ad unum heredem descenderint, vel aliquis sibi a diversis feoffatoribus tenementa acquisiverit, pro*

illis hereditatibus & tenementis diversis ad unam curiam exigi non debeant sectæ diversæ, vobis præcipimus quod non distringatis, &c.

(b) But if the feoffment be made before time of memory, one shall not have a *contra formam feoffamenti* but a *ne injuste vexes*, for such a feoffment is not pleadable. 12 H. 4. 24.

G 3

contrary

contrary to the writs sent to them, the tenant thereupon shall have an attachment, and a distress; and the form of the writ is such:

The king to I. or to the bailiffs of I. greeting: Whereas by the common council of the realm, &c. it is provided that none by reason of their tenements be distrained to do suit at the Court of their lords, unless they are specially bound to that suit by the form of their feoffment, or they or their ancestors holding those tenements, have been accustomed to do it before the first voyage of lord king Henry into Brittany: we command you, that you do not distrain A. to do suit at your court of I. or at the Court aforesaid, of your lord of N. against the form of the provision aforesaid: and the distress, if any, &c. B

17 Ed. 3. 8.
4 Co. 121. b.
14 H. 4. 5.

And no person shall have this writ of *contra formam feoffamenti*, but he who was (a) infeoffed, or his heirs who are privies to the deed; but if the feoffee, to whom the lands were (b) given to hold of the feoffor and his heirs, by the deed, make a feoffment over to hold of the chief lord, &c. the feoffee shall not have this writ *de contra formam feoffamenti*, because he is not party or privy to the deed, but he shall (c) rebut the lord by such deed, from claiming other services than are mentioned in the deed. D

And this writ is a prohibition unto the lord and his bailiffs; and if he distrain after the writ delivered to him,

4 Ed. 2. *Avowry* 122, 202.
22 H. 6. 50. 36
H. 6. 7. 22 Ed.
3. 28.

(a) But the contrary has been adjudged, where the feoffee of him to whom the deed was made, brought the writ against the grantee of him who made the deed, and he was adjudged to answer; and by *Wilby* it had been often so adjudged. 4 Ed. 3. 25. See 4 H. 4. 5. *per Thirn.* a feoffee, &c. See 10 Ed. 3. 25. acc. *per Trem*.

(b) See 4 Ed. 2. *Avowry* 202. *per cur. cont.* if he had paid him himself. 4 Ed. 2. *ib.* 202.

(c) A stranger may rebut the feoffor or his heirs by the deed of feoffment notwithstanding the seisin. 5 Ed. 3. 19. 8 Ed. 3. 67. 4 Ed. 2. *Avowry*

202. See *contra* 4 Ed. 2. *Avowry* 401. *Rebutter* 22 Ed. 3. 18. although the feoffment was made to a stranger to the tenancy, he shall not rebut a stranger in the seignior, after seisin by deed of confirmation before time of memory, 11 Ed. 3. *Avowry* 100. nor by deed of feoffment, 10 Ed. 3. 25. he shall not forejudge the tenant 7 Ed. 3. 8. See 44 Ed. 3. 39. *contra per Kart.* The party rebuts the lord by confirmation of his grantor, to hold by less services. 28 Ed. 3. 92, 93. *per cur.* See 10 *Aff.* 29. 28 *Aff.* 33. 12 R. 2. *Avowry* 206. 34 Ed. 3. *ibid.* 258. 19 Ed. 3. *ibid.* 122.

he

the tenant shall have an attachment against him and thereupon he shall recover his damages if it be found for him, &c. and the process is prohibition, attachment and distress.

E And the rule in the Register is, *if any for suits not due against the form of any statute, to the Court of any to be done, be distrained, he may have a prohibition against the distrainer, and after an attachment if need be: nor can he be attached, unless a prohibition be first directed unto him.*

F And the opinion of *Parning* is, *P. 10 Ed. 3.* that if a man give land in frankmarriage, or in frankalmoign the donor shall not have a writ of *contra formam feoffamenti* nor his heirs; because there are not any services expressed in the deed, for which reason he is out of the statute of *Marlebridge, cap. 9.*; but they may rebut the lord by such deed.

10 Ed. 3. 25.
31 Ed. 1. Avowry 249.

G And if the lord confirm the estate of the tenant to hold by less services, &c. the tenant shall have a writ of *contra formam feoffamenti*; if he be distrained for more services than there are specified in the deed of confirmation. *M. 16 Ed. 3.*

16 H. 3. Avowry 243. 11 Ed. 3. ibid. 100. 28 Ed. 3. 92. Avowry 241. 243. 30 Ed. 3. 13.

H And in a *contra formam feoffamenti*, the plaintiff counted upon the deed, and the defendant demanded *oyer* thereof, and could not have it. *M. 3 Ed. 2. action sur statute 25.*

10 Ed. 3. 25.
7 Ed. 3. 8.

I And the *contra formam feoffamenti* lieth only against the feoffor and his heirs.

Writ de Coronatore eligendo vel exonerando.

4 Ed. 4. 44.

K **W**HERE a man who is coroner of any county dieth, or is discharged of his office, (a) then this writ shall be awarded unto the sheriff, that he in full county, by the freeholders of the county, chuse another in his place, and certify the election, and the name, of him who is chosen, in the chancery.

(a) Note; A coroner made sheriff is discharged from his office of coroner. *C. L. 79.*

Writ de Coronatore eligendo vel exonerando.

And in every county commonly there are four coroners, **L** and in some counties six coroners, and in some counties fewer as the usage is; and if any of them die, or be discharged, then shall issue such writ :

The king to the sheriff, &c. Because L. one of our coroners **M**
in your county, is dead, as we have received information; we command you, if it be so, that then in your full county, with the assent of the same county, you cause to be chosen in the place of him the said L. one other coroner, according to the form of the statute thereof set forth and provided, who having taken the oath (as the custom is) from thenceforth shall do and keep those things which belong to the office of coroner in the county aforesaid, and cause to be chosen such a person, who best may know and be most able to discharge that office, and make known to us his name. *Witness, &c.*

And now it appeareth by the writ, that upon election made the sheriff shall give him his oath duly to execute his office. *Vide stat. West. 1. cap. 10.*

L. 5 Ed. 4. acc.
By our judgm.
coroner shall not
be discharged by
demise of the
king because he
is made by writ;
contr. of others,
who are by com-
mission.
4 Ed. 4. 43.

And the coroner shall be discharged of his office by **N**
the king's writ sent unto him, and thereupon shall issue another writ directed unto the sheriff to chuse a new coroner, and that writ shall recite the (b) cause of the discharge of the other coroner; and the writ shall be such :

The king to the sheriff, &c. Because R. one of our coro-
ners of your county, is so much occupied in doing our divers
businesses in your county, that he hath not leisure to exercise
those things which belong to the office of a coroner in the same
county (as we certainly understand) we have removed him from
that office; we command you that, &c. one other coroner, &c.
(as above). Or thus, because we have received information
from worthy testimony, that W. T. one of our coroners of
your county, is so infirm and broken with old age, that he is not
able to exercise those things, &c. we have commanded him
the said W. to be removed from that office; and therefore we
command you, &c. Or thus, because W. one of our coroners
&c. is unfit to execute that office, as from the relation of, &c.

(b) But this cause is not traversable. 5 Co. 58.

Or thus, *because we have received information, that W. lately chosen coroner of the county aforesaid, hath not lands or tenements in the same county, by which he can keep up his state for the exercising the office (c) aforesaid: we command you, &c.* Or thus, *because A. one of our coroners, &c. is struck with the palsy, &c.* Or, *because he dwells in the extreme parts of the whole county, by which he cannot conveniently exercise those things which belong to the office, &c.* Or, *because he is chosen into the office of sheriff of the county aforesaid, or is chosen verderor of our forest of S. by which, &c.* Or, *because he hath not one hundred shillings of land, as it is said, or because he is not a knight, &c.*

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But it seemeth, that at this day this last clause is not cause to remove the coroner: for if he have sufficient lands within the county, it sufficeth, although he be not a knight, notwithstanding the statute which requireth that he be a knight. For those words are put into the statute, to the intent that he should have sufficient within the county, and for no other cause. And it seemeth, the

A

B

king by his writ may command the sheriff to chuse two or three coroners, if there want so many in the county. And if the sheriff chuse one to be bailiff of the hundred or wapentake; or if the lord of a liberty chuse one to be bailiff of the liberty, who hath not sufficient land within the county, according to the statute of *West. 2.* (but see the statute of *2 Ed. 3. cap. 4.* thereof) then a writ shall be sent to the sheriff to discharge such bailiff, and to chuse another in his place, and upon that a man may have an *alias* and *pluries*, and attachment against the

(c) *Note*; If there are four coroners in one county, and a writ is directed to them, if one dies yet the other three may execute the writ, because there still remains the greater number; but if before the execution of the writ, three shall die, so that there is only one remaining, he cannot execute the writ until others are elected. *14 H. 4. 39.* If there are four coro-

ners, and a writ is directed to them, three coroners cannot make a return of the execution of the writ. *31 Aff. 20.* But if one of them makes execution of it, and the return is by all of them, there it is good, as if one of them only sits at the county-court on the exigent. *14 H. 4. 34. per Hank. in a capias. 39 H. 6. 41.*

sheriff,

Writ de Coronatore eligendo vel exonerando.

sheriff, if he do not according to the writ; and the writ is such :

The king to the sheriff, &c. Whereas in the statute lately set forth at Westminster it is contained, that no man shall be sheriff or bailiff of a liberty, wapentake, hundred or tithing unless he hath lands and tenements sufficient in the same county, from whence he may be able to answer to us or our people in this behalf, if any one shall complain against him; and now we understand, that you have made W. of T. who hath not lands or tenements in the same county, bailiff of our wapentake of B. in contempt of us, and to the great damage and grievance of our people in this behalf, and against the form of the statute aforesaid; we therefore command you, if it be so, that you cause him the said W. to be removed from the office of bailiff aforesaid without delay, and cause another competent person to be constituted and ordained in his place, according to the form of the statute aforesaid. Witness, &c.

Writ de Electione Viridarium Forestæ.

THE writ of election of the verderors of the forest C
lieth, where any of the verderors are dead, or removed from their offices, &c. then the king sendeth a writ to choose another in his place, and it shall be directed to the sheriff, and is such :

The king to the sheriff, &c. Because A. lately one of our verderors of our forest of D. is dead, as we have received information; therefore we command you, if so it is, that then in your full county, with the assent of the same county, you cause to be chosen in the place of him the said A. one other verderor, who having taken the oath (as the custom is) from thenceforth may do and keep those things which belong to the office of verderor in the forest aforesaid, &c.

And by that it appeareth, that the verderor shall be chosen in the same manner as the coroner of the county shall be chosen, by the freeholders of the county.

And if a coroner or verderor be discharged of his office D
by false suggestion by the king's writ directed to the sheriff, then the party may come into the chancery; and require a commission to enquire of the said false suggestion, and

and to return the enquiry before the king into the chancery or the justices of the forest may certify the king of the false suggestion under their seals; and if it be found to be false, then the king may make a *superfedeas* to the sheriff, that he do not remove the verderor, if, &c. and if he be removed that he suffer him to exercise his office as he did before; and the writ is such.

The king to the sheriff, &c. Although it hath been suggested unto us in our chancery, that A. one of the verderors in our forest of S. had not lands or tenements within the limits of the forest aforesaid, nor dwelt within the said forest, and we commanded you, if it was so, that then in your full county, with the assent of the same county, you should cause to be chosen in the place of the aforesaid A. one other verderor, who having taken the oath (as the custom is) should do and keep those things which belong to the office of verderor in the forest aforesaid: nevertheless, because it is certified before us in our chancery by our beloved and faithful I. of S. our justice of our forest beyond Trent, that he the said A. hath sufficient lands and tenements within the forest aforesaid, and is fit and sufficient for the office aforesaid; we being unwilling that he the said A. should be removed from that office by occasion of this false suggestion, command you, that you wholly supersede the execution of our said writ to you directed by reason of the said false suggestion, and permit him the said A. to exercise that office as hath hitherto been accustomed to be done. Witness, &c.

Writ for the Election of the Clerk to take obligation upon Statutes-merchant.

E THE writ for the election of the clerk assigned to take and make obligation by statute-merchant, lieth where the clerk who is assigned to take such obligation, dwelleth in another place, or is busied in other affairs, so that he cannot attend or follow the office, or that he hath not sufficient lands, &c. to answer for his mis-doing; then upon a surmise made in the chancery, such writ

Writ for the Election of the Clerk, &c.

writ shall be made directed unto the mayor or bailiff to discharge him, and to chuse another; and the writ is such, viz.

The king to the bailiffs and to the honest men of the town of H. greeting: Because we have received information from the relation of many persons, that R. who now hath the custody of the greater piece of the seal appointed for taking obligations, according to the form of the statute of Acton Burnell in the town aforesaid, dwelleth not in the town aforesaid, by which he cannot attend to do those things which belong to his office in this behalf, to the great expence and grievance of the merchants and other persons resorting to the said town: we command you if it is so, that then you cause to be chosen in the place of him the said R. one other man of the town aforesaid who better knows and can attend to do those things belonging to that custody, and certify us of the name of him whom you shall so chuse, distinctly and openly, under your common seal, without delay, sending to us this writ. Witness, &c.

And it appeareth by the statute *de mercatoribus*, that the king shall make the clerk; and by the writ it appeareth, that the mayor or bailiffs shall chuse the clerk, &c. but it seemeth that the writ is granted *ex gratia regis*. For he may send a writ of discharge unto the clerk, and make a new clerk (as it seemeth) at his pleasure.

(a) Writ de non ponendis in Assisis & Juratis.

29 Ed. 3. 15.
One was chosen
by knights in a
writ of right
upon the grand
assise, and after
he shewed a
charter of ex-
ception, de
non ponendis, &c. and it was not allowed, the same suit in attain.

THE writ *de non ponendis in assisis & juratis* is grounded upon the statute of *West. 2. cap. 38.* and upon the statute of *articuli super chartas, cap. 9.* which statutes declare what persons the sheriff ought to impanel and what number he ought to impanel in juries and

(a) Note; The sheriff or other officer who discharges any person by colour of any writ, &c. to serve as a juror, who is under seventy years of age, forfeits twenty pounds by stat. 7 and 8 W. 3. *Vide post. D.*

inquests

inquests, and the writs declare the effects of the statutes; and the writ shall be such:

The king to the sheriff, &c. Whereas amongst other articles which lord E. formerly king of England, &c. ordained for amendment of the state of his people, it is granted, that no sheriff or bailiff shall put in inquests or juries more men, or other persons, or in other manner, than is ordained by the statute, and that they shall put in inquests and juries such men as be nearest neighbours, most sufficient and least suspicious, and he who shall do otherwise, and shall be convicted thereof, shall pay the plaintiff his damages double, and be in our great mercy; we command you, that in the jury of twenty-four knights, which H. T. of K. hath arraigned before, &c. by our writ against W. F. to convict the jurors of the assise of novel disseisin, which between him the said W. and the said H. T. and others contained in our original writ, was summoned and taken at E. by our writ before us, of tenements in C. you cause to be put men nearest to that neighbourhood, most sufficient and least suspicious, by whom the truth of the matter may be better known and inquired, according to the form of the articles aforesaid, and this in no wise omit.

- B** And by this writ it appeareth, that when a man sueth an assise of attainr, or such actions in which are jurors at the first day, &c. he may also sue this writ directed to the
- C** sheriff, that he return the panel according to the statute; and if the sheriff do not accordingly, then it seemeth the party shall have an attachment against the sheriff. And this writ may be sued as well by the defendant as by the plaintiff or demandant, and also although the party do not sue forth the writ, yet if the sheriff or bailiff of the liberty return a panel against the form of the statute, the party defendant or plaintiff may have an action upon the statute against the sheriff, &c. because the statute is a prohibition in itself; and the form of the writ of attachment upon the same is such:

The king to his coroners in the county of Lincoln, &c. put by gages, &c. B. our sheriff of the county aforesaid, that he be before, &c. to shew wherefore, whereas amongst other articles, &c. (as above, till) in our great mercy; and lately (at the prosecution of H. affirming that a certain inquest ought to have been taken

ken before our justices aforesaid in a plea which was before the same justices by our writ between R. demandant, and T. tenant of the manor of S. with the appurtenances) we commanded the said sheriff, that he should put in that inquest men nearest neighbours, most sufficient and least suspicious, according to the form of the statute and articles aforesaid, he the said sheriff hath put in the same inquest men most remote, least sufficient and most suspicious, contrary to the form of the same statute and articles, and against the tenor of our said command, as it is said: and have, &c.

West. 2. Bro.
Jurois 49.

And by the statute of *Westm. 2.* aforesaid, the sheriff ought not (a) to impanel men who are sick or decrepit, or men who at the time of the summons were not dwelling within the county, or men above the age of threescore and ten years, &c. and if he do, then he, or those who are impanelled by the sheriff, may sue this writ unto the sheriff, commanding him that he do not impanel them, &c.

48 Ed. 3. 30.
27 H. 8. 22.

And barons who are lords shall not be impanelled upon inquests nor assises, &c. if their presence be not necessary; but they shall have a writ unto the sheriff to discharge them thus:

The king to the sheriff, &c. Because the barons of our realm have not been accustomed to be put in any assises, juries or recognizances, as they say, unless their oath be so necessary, that the truth cannot be inquired without them; we command you that you do not put, or cause to be put, our beloved and faithful A. in any assises, juries or recognizances, against his will, without our special command, unless his presence be for some cause specially required. Witness, &c.

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But if the sheriff hath returned any lord in juries or assises, &c. then he ought to bring a writ unto the justices, reciting that he is a peer of the realm, commanding them to discharge him, otherwise he shall be sworn, and if he do not appear, he shall lose issues, &c.

There are also other writs for those who are sick, or past seventy years of age, or those who are not dwelling in the county, and the writ is such:

The king to the sheriff, &c. Whereas by the common council, &c. it is provided that men continually infirm, or thus: that

(a) See the stat. 7 8 W. 3. cited *supra*, A.

Writ de non ponendis in Assisis & Juratis.

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men not dwelling in the county at the time of the summons of the sheriff. Or thus: that men exceeding the age of seventy years, shall not be put in assises, juries, &c. we command you, that if A. be continually infirm; or thus, exceeding the age of seventy years; or, at the time of your summons shall not be dwelling in your bailiwick, or your county, then that you put not, or cause to be put, him the said A. in assises, juries or recognizances, against the form of the provision aforesaid. Witness, &c.

- B** Clerks who have lands or tenements by descent or purchase, may be put and sworn in assises and inquests as well as other lay persons, as appeareth by the register; and it seemeth the law is such. But if such clerk be in the king's service, he shall have a special writ to discharge him; and the writ is such:

Ant. 16.
Post. 266.

The king to the sheriff, &c. Because master R. Clerk, at this time continually abideth in our service, or in the service of the venerable father I. bishop of Ely; we command you, that him the said R. by reason of the lands and tenements which he holds in the county aforesaid, you put not or cause to be put in any assises, juries or recognizances, so long as he abides in the service of us, or of the same bishop, as abovesaid. Witness, &c.

And by the writ it appeareth, that a clerk shall be put and returned in panels and juries, if he be not in the service of the king or other person for whom the king will write to the sheriff, that he do not impanel him, &c. but if the sheriff impanel and return such clerks, they ought to appear, otherwise they shall lose issues, and they have no remedy if they have not such writ as before.

- C** And if the sheriff impanel, or return them in juries after such writ directed unto him, then, as it seemeth, they shall have attachment against the sheriff, &c.

- D** But if the sheriff return men who are dwelling in other counties, or past seventy years of age, or those who are sick, then they shall have an action upon the statute against the sheriff, although they have not sued forth such writ, directed to the sheriff, because the statute is a prohibition to him; that he return not such persons, and, it seemeth, the sheriff is bounden to take notice of the statute at his peril; *tamen quære.*

St. 21 Ed. 3.
Jurors, p. 3.

Writ de non ponendis in Assisis & Juratis.

And if the sheriff return any panel-men who are not sufficient to pass in the action of lands and tenements, &c. then the juror may have an action upon the statute; which is such:

The king to the sheriff, &c. whereas for the common utility of the people of our realm it is appointed by the common council of the same realm, that no person be put in any assises, juries or recognizances, unless he hath lands and tenements to the value of forty shillings by the year at least, yet so that before justices itinerant at common pleas in their eyres, and also in assises, juries or recognizances which happen to be made in cities, boroughs and other towns, may be done as hath heretofore been accustomed to be done; we command you, that if A. hath not lands or tenements to the value of so much by the year, then put not or cause to be put him the said A. in assises, juries or recognizances, against the form of the statute, &c.

Stat. 2 Ed. 1.
Jurors 3.

And if the sheriff do the contrary, &c. the party shall have an attachment against the sheriff. And by the statute the sheriff ought not to impanel any juries to try any matter which shall be tried out of the county, if they cannot expend five pounds by the year, &c. And if he do, the party shall have an action upon the statute of 21 Ed. 1. *de ponendis in Assisis, & Juratis.*

Ant. 14. F.

And if the sheriff return any panel-men who dwell within ancient demesne for their lands within ancient demesne, then they may have a writ against the sheriff, that he do not return them; and the writ is such:

The king to the sheriff, &c. Whereas according to the law and custom of our realm hitherto obtained and approved, the men and tenants of the manors which are of the ancient demesne of the crown of England, for the lands and tenements which they hold of the same demesne, ought not to be put in any assises, juries or recognizances, except only in those which ought to be made in the court of such manor; we command you, that you put not or cause to be put our men and tenants of our manor of I. which is of the ancient demesne of the crown of England, (as it is said) for the lands and tenements which they hold of the same manor, in any assises, juries or recognizances out of the court of the manor aforesaid, contrary to the law and custom aforesaid, except

they hold lands and tenements of another tenure, by which, according to the form of the statute provided by the common council of the realm, they ought to be put in assises, juries or recognizances, and the distress, if you have made any upon those our said men and tenants by the occasion aforesaid, you release to them without delay. *Witness, &c.*

And by this writ it appeareth, that all the tenants may sue the writ, as they may sue forth a *monstraverunt*; and if the sheriff do contrary to the writ, they shall have an attachment against him, and any of the tenants may sue the writ in his own name if he will; and then the writ shall be such:

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The king to the sheriff, &c. (as above, till) we command you, that A. tenant, or thus, A. and B. tenants of the manor of M. which is of the ancient demesne of, &c. (as above).

And although the manor be not in the king's hands; yet the tenants shall have the writ against the sheriff, if he impanel them, &c. And also they shall have the same writ against the bailiffs of the liberty who have return of writ, if they return any of the tenants who hold of a manor which is ancient demesne, for juries, assises or inquests, &c.

And also the sheriff ought not to return coroners in assises, juries or inquests, or verderors, or foresters, or other officers of the forest; and they may have a writ to discharge them; and the writ shall be such:

The king to the sheriff, &c. because A. one of our coroners of your county, cannot attend to exercise those things which belong to the office of coroner in the same county, if he be put in any assises, juries or recognizances out of the same county; we command you, if it be so, then that you put not or cause to be put A. in any assises, juries or recognizances out of your county, whereby he may be less able to attend the office aforesaid.

A And by that it appeareth, that the sheriff may return the coroner to inquire of affairs in the county before commissioners or justices of the peace. But upon actions sued in the common pleas or king's bench, they shall not be returned in any panel. And for verderors or foresters, or other officers, the writ is such:

The king to the sheriff, &c. Whereas lord Edward formerly king of England, our progenitor, by his letters patent granted

Writ upon the Statute of 23 Ed. 3.

for himself and his heirs, that foresters, verderors, or other ministers of his forest, should not be put in any assises, juries or recognizances to be taken out of the forest; we command you, that if A. be our verderor of our forest of S. or forester, &c. then put not or cause to be put him the said A. in any assises, juries or recognizances (a) to be taken out of that forest, according to the form of the provision aforesaid, and the distress, if any, &c. Or thus: because one of our verderors of our forest of S. in your county, cannot attend to exercise those things which belong to the office of a verderor in the same forest, if he be put in assises, &c. out of the forest aforesaid; we command you, &c. (as above).

Writ upon the Statute of 23 Ed. 3.

Stat. 23 Ed. 3.
Labourers.
P. 2. Vide
Co. Litt.
13. Ed. 42.
b. n. 1.

IF a man retain my servant being in my service, where- B
by the servant departeth from me, &c. and goeth to serve the other, I shall have an action against him who retained him, and against the servant, upon the statute of 23 Ed. 3. And the writ shall be attachment against them, because the statute is a prohibition to them, that they shall not do so; and the form of the writ is such:

The king to the sheriff, &c. If A. shall make you secure, &c. then attach I. of B. so that you may have him before our justices, &c. as well to answer us as the aforesaid A. wherefore, whereas it is ordained by us and our council, for the common utility of our realm, that if any mower, reaper, or other labourer or servant, of whatever state and condition he shall be, retained in the service of any man, should depart from the said service before the end of the term agreed upon, without reasonable cause or licence, he should undergo the pain of imprisonment, and no person under the same punishment should presume to receive or retain such servant in his service, nor should any person pay or promise to pay to any servant greater wages, liveries, rewards or salaries, than were used to be given in the twentieth year of the reign of king Edward the Third, our progenitor, or was common one year with

(a) See Rot. Claus. 9 H. 3. m. 5. *Viridarii & Forestarii Domini Regis de Feodo non ponantur in Assis.*

another in the five or six years next preceding, under the penalty of double of that which should be so paid or promised, to be applied to his use who shall perceive himself aggrieved by this, the aforesaid I. retained in his service at B. R. of C. lately serving him the said A. who, from the same service before the term agreed between them (promise being made to him by him the said I. of a salary to be received more than usual) without a reasonable cause and the licence of the aforesaid A. departed into the service of him the said I. and although he hath been requested to restore the aforesaid R. to him the said A. he hath admitted and retained him, in contempt of us, and to the great damage of him the said A. and contrary to the form of the ordinance aforesaid; also attach the aforesaid R. so that you may then have him there as well to answer us as the said A. wherefore he departed from the service of the said A. without a reasonable cause and his licence as aforesaid, in contempt of us, and to the great damage of him the said A. and contrary to the ordinance aforesaid: and have there this writ. *Witness, &c.*

And he may sue the writ against the master only, or against the servant only, and it appears when the writ is against the master and the servant, then there are several attachments made in the writ. 9 H. 6. 7.

- C (a) And if a man be required to serve, and have not lands or tenements to live upon, or other art or trade, and he refuse to serve, then he who requireth him to serve shall have this writ: Stat. 23 Ed. 3.
c. 1.

The king to the sheriff, &c. If W. &c. then attach R. so that you may have him before our justices, &c. as well to answer us as the aforesaid W. wherefore, whereas it is ordained by us and our council, for the common, &c. that every man and woman of our said realm, of whatsoever condition he shall be, free or servile, being able in body and within the age of sixty years, not living by merchandize, or exercising a certain craft, or having of his own whereof he can live, or land of his own, about the tilling whereof he can occupy himself, and not serving another, if he should be required to serve in a fit service, his state being con-

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(a) See 39 Ed. 3. 6. one cannot join, in one writ, two persons who refuse to serve.

sidered, he should be bound to serve him who should first come to require it, and should receive only the wages, liveries, rewards or salaries, which in the places he ought to serve were accustomed to be paid in the twentieth year of the reign of king Edward the Third, or common in the five or six years one with another preceding; and if such man or woman so required to serve would not do this, he should be immediately taken and sent to the next gaol, and should abide there under close custody until he should find security to serve in form aforesaid, he the said R. being of such condition, hath absolutely refused to serve the aforesaid W. although he hath been often requested to serve him the said W. for a salary competent to his state and accustomed in the said preceding years one with another, in contempt of us, and to the great damage of him the said W. and contrary to the form of the ordinance aforesaid; and have, &c. Witness, &c.

Br. Labourers.

And if the servant be retained in winter to serve, and after will depart from his master in the summer, and serve in another place, then he whom he served in winter, shall have a writ to compel him to serve him in summer, which is such:

The king to the sheriff, &c. If W. of C. &c. then put I. of S. that he be, &c. as well to answer us as the aforesaid W. of C. wherefore, whereas it is appointed by us and our council for the common utility of our realm, that no servant of whatsoever state or condition he should be, should go away out of the town where he dwelt in the winter, to serve elsewhere in summer, if he could find a service in the said town, under the pain of imprisonment, except that the men in the county of Stafford, Lancaster and Derby, and of the marches of Wales in the time of August, may come to labour in other counties, and safely, as hitherto they have been accustomed to do, and may return; the aforesaid I. in the service of him the said W. at F. in winter lately retained, hath refused to serve the aforesaid W. or any other person in the town aforesaid, although he hath been often requested to serve in the same town for a competent salary, in contempt of us, and to the great damage of him the said W. and contrary to the form of the statute aforesaid: And have there the names of the pledges and this writ. Witness, &c.

The lords of towns, or justices of peace, may commit B
vagrants to prison, if they will not serve, and they may

com-

command the gaoler to set them at liberty without any other writ.

C And if a man be retained in service, and go wandering abroad out of his service, another man may compel him to serve him, &c. because he is out of service.

(a) And so if a man retain another's servant, not knowing that he was in the service of the other, he shall not be punished for so doing, if he do not retain him after notice of his first service.

D (b) An infant of twelve years of age shall be bound by his covenant to serve in husbandry.

A woman of such age shall be also bound to serve in husbandry by her covenant.

(c) If a man take an infant or other out of another's service, he shall be punished, although the infant or other were not retained.

An infant by his covenant shall be bounden to serve in husbandry, although he may spend forty shillings or twelve marks by the year.

E And so a gentleman by his covenant shall be bound to serve, although he were not compellable to serve. For if a

(a) *Note*; If it be in the same county, he ought to take notice of the first retainer at his peril, but he is not punishable, if he be found vagrant in another county, 17 Ed. 4. 7. 18 Ed. 4. 5. except he procure his departure; and if so, he is punishable by the statute; but if one retains a servant, who has left his master within the term, or if one procure a servant to depart within his term, and after retains him, so that he has notice, yet he is not punishable at common law *de serviente abducto* 11 H. 4. 24. adjudged: *Sed quere*, and 9 Ed. 4. 32. seems *contra*; and if one takes my servant out of my service, against my will, though it be with the servant's good will, yet a general writ of trespass lies.

(b) See the like, where an infant of ten years old was discharged of an action on the statute; *contra*, if he had been twelve years old; yet by *Hankf.* a writ

lies against a stranger who takes him, 2 H. 4. 18. an infant by custom may bind himself apprentice, 9 H. 6. 8. and the diversity agreed. See 21 H. 6. 31, 33. 9 H. 6. 10. Stat. 5 Eliz. of labourers.

(c) See where a servant was but nine years old, in a writ against him, and the husband and wife who had retained him, the infant was discharged, but the husband and wife put to answer, and they plead that he was not retained by them, and issue taken, &c. 29 Ed. 3. 27. but as it seems to me, *Finchden* there takes a good diversity, if the servant departs first, (where he was never lawfully retained) there an action does not lie against him who shall afterwards retain him; *contra*, if he be taken with force, &c. action lies, tho' he found the infant vagrant, and retained him. 38 Ed. 3. 5. See 12 H. 8. 10, &c.

Writ upon the Statute of 23. Ed. 3.

gentleman, or (a) chaplain, or carpenter, or such as should not be compelled to serve, &c. (b) covenant to serve, (c) they shall be bound by their covenant, and an action will lie against them for departing from their service.

And if a man retain one to serve him for forty days, and another afterwards retain him to serve him for a year, the first covenant is avoided, because the retainer was not according to the statute. F

And so if a man be retained to serve at every time he shall be required, it is no retainer according to the statute, but a covenant, if it be by deed; and without deed it is void.

And a man shall not have an action against an apprentice upon his departure, upon the statute 27 *Ed. 3.* 22. G

Co. Litt. 42. b. And if a man retain one to serve him, and express not for how long he shall serve him, he shall serve him for a year; for that retainer is according to the statute. H

If a man who is not to have any servant, retain one to serve him, &c. the retainer is void.

He who hath not sufficient lands of his own to occupy, I shall be compelled to serve. I

(d) And a man may retain one for two or three years, and it is good. K

39 E. 3. 2.
6 E. 4. 2.

And keeping from the servant meat and drink, is a good cause for his departure from his service. L

And so battery; or licence to depart, is a good cause of departure.

50 E. 3. 22.

The lord may take his villain out of the service of another, (e) if he hath need of servants, otherwise not. M

If

(a) A writ does not lie on the statute for departure of a chaplain who is retained to say mass. 10 *H. 6.* 8.

(b) See accordant 11 *H. 6.* 1. but by *Martin, Quere*, if he be retained only for a day, if he shall defeat the covenant, supposing the request to serve is for a year.

(c) But the count ought to be special. 11 *H. 4.* 33.

(d) 29 *Ed. 3.* 27. It is doubted if

a retainer for more than a year, be within the statute. *vide infra.*

(e) 29 *Ed. 3.* 41. Resolved, 1. if a villain be forced by distress to go to his lord, he shall be excused against him who retains him. 2. That though the lord or his feoffor have not been seised of the villain for twenty or thirty years, yet he is not enfranchised, but the lord may take him. 3. that the villain may justify his departure,

causa

- N If a woman who is a servant marry, yet it seemeth she ought to serve (a).
- O If the husband and wife be retained in service during their marriage, &c. if they depart from their service, an action upon the statute lieth against them.
- P If the servant be drawn away, the master may re-apprehend him, and keep him against his will.
- Q If the master's wife beat the servant, it is good cause for the servant to depart and leave his service.

Writ de Restitutione Temporalium.

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A **T**HE writ of restitution of the temporalities lieth, in case a spiritual person be elected a bishop, and consecrated, &c. then he shall have this writ unto the escheator, &c. And so it is of an abbey or prior, which is of the king's foundation, the abbot or priory ought to have the king's royal assent, &c. when he is elected and confirmed, and must, (b) sue a writ to be restored unto the temporalities; and the form of the writ for the prior is such:

The king to his escheator in the county of Devon, greeting: whereas the venerable father H. bishop of Exeter, hath lately confirmed the election made in the conventual church of P. of our beloved in Christ friar I. of C. canon of the same house, to the priory of that place (to whom we had before given our royal assent and favour) as appears by the letters patent of him the said

causa qua supra, by attorney. See 30 Ed. 3. 31. They were at issue whether the lord had need of the service of the villain; and *Green* doubted if it was issuable. See 9 H. 4. 12. the lord had occasion for his service, and took him. See 19 R. 2. *Action on the case* 52. for taking his villain.

(a) See *contr. per cur'*, 11 H. 4. 13. that it is not lawful to take her during the espousals. 46 Ed. 3. Bar. 214. 7 R. 2. *Trespas* 206.

(b) And sometimes it was by man-

date to the tenants of the abbey, &c. *quod sint intendentes abbati electo*, Rot. Parl. 1 Ed. 1. m. 20. *pro Abbate de Wells*, and see there *pro Episcopo Cant.* Rot. Parl. 2 Ed. 1. m. 24. *pro Priore de Southwick*: and see the charter of king John, Mat. Paris 352. *Salva nobis & heredibus nostris custod. Ecclesiarum & Monasterior' Vacantium*, &c.—Et vide *quæ vacant spectant ad Regem*, 31 Ed. 3. *Ayd de Roy* 103. 19 Ed. 2. *Quare impedit* 178. Rot. Claus. 6 Ed. 3. m. 23. viz. not of churches appropriate.

H 4

bishop

bishop to us thereof directed; we accepting that confirmation have taken the fealty of him the said elect, and have restored to him the temporalities of the priory aforesaid (as the custom is): and therefore we command you, that you deliver to him the said elect the temporalities of the priory aforesaid in form aforesaid.

And by this writ it appeareth, that when a priory or abbey B is void which is of the king's foundation, they ought to have the king's royal assent to go to the election; and after the election made, the bishop ought to confirm the election, and to certify the king thereof by his letters, and thereupon the king should take his fealty; and grant this writ to restore the temporalities.

And there is another writ when the king grants only his assent to go to the election, and to make the prior, without any certificate made before of the election, and the writ is such:

The king, &c. whereas the venerable father, &c. hath preferred our beloved in Christ C. of D. canon of the same house, elected to be prior of that place (to which election we had first given our royal assent and favour) to be prior and pastor of the same place, as appears by the letters patent of him the said bishop to us thereof directed; we allowing that preferment, have taken fealty of him the said governor, and the temporalities of the priory aforesaid, &c. (as above).

And the prior so elected and established may have a writ C out of the chancery directed unto the tenants of the priory, that they accept him for their prior and lord, &c. and that they be attendants, &c.

And where a priory or abbey ought to have the royal assent D to go to election, and obtain the same, and afterwards make the election, and the bishop avoid it, and afterwards they submit unto the award and arbitrament of the ordinary, to name to them one to be prior, &c. and make him prior, and certify the king thereof by his letters, the king thereupon may grant such writ, viz.

The king, &c. Whereas the venerable father I. bishop of Winchester, hath avoided the election lately made in the church of S. D. near S. of our beloved in Christ friar T. of N. canon of the same house, to be prior of that place; and by virtue of the sub-
mission

mission of the convent of the place aforesaid made to him, to provide for the same priory a fit prior for that turn, hath preferred our beloved in Christ friar I. of W. canon of the same priory, to be prior and pastor of that place, as appears by the letters patent of him the said bishop to us thereof directed; we being willing to deal graciously with him the said I. have taken fealty of the said I. and have restored to him the temporalities of that priory (as the custom is): and therefore we command you, &c. (as above).

And by that writ it appeareth, that the writ is of the king's special grace; for the king might lawfully refuse the establishment of the prior, because he was not elected according to the king's licence, and with his assent, &c. But yet the common use is, that if they cannot agree in the election, to submit themselves unto the award of the ordinary.

E And there is another form of writ where the king grants his royal assent to any chapter to chuse the bishop, and they chuse one of the chapter; and because the archbishoprick is void, the guardian of the spiritualities (a) certifies this election unto the king, and his confirmation upon the same; and upon that the king grants a writ of restitution, &c. in such form:

The king &c. whereas our beloved in Christ the prior and chapter of the church of Christ of Canterbury, guardians of the spiritualities (the archiepiscopal see of Canterbury being void) have confirmed the election lately celebrated in the cathedral church of the discreet man master H. of H. archdeacon and canon of the same church, to be bishop of that place (to whom we had first given our royal assent) as by the letters patent of the said prior and chapter thereof to us directed appears; we the confirmation, &c. (as above).

F And before the statute of *Præmunire* the king might seize the temporalities of the bishop, if he came to the same by provision of the pope; but now he shall forfeit all his lands and goods by the statute of 16 R. 2.

G And it appeareth by the Register, if a bishoprick of *Ireland* be void, that they shall sue to the king here in *England*

(a) See this certificate by letters of the metropolitan, with a special conclusion, (forbidding any to say the contrary. 21 Ed. 3. 40.

to go to election of another, and after the election made, they ought to have his royal assent to that election, upon certificate of the election to the king; and thereupon a writ shall be out of the chancery here to the chief justice of Ireland, or his lieutenant, rehearsing the whole matter, commanding him to take the bishop's fealty; and to restore to him the temporalities; but now the course in Ireland is to make such writs there in the king's name, but the king nominates the bishops there, and also in England; and then the chapter shall chuse him whom the king hath nominated unto them; and thereupon the writs are made of course.

[170] But how and in what manner archbishops and bishops A shall be elected, nominated, presented, invested and consecrated unto the dignity of an archbishoprick or bishoprick, see the statute thereof made 25 H. 8. cap. 20.

And the king may give power to another to give his assent to go unto the election, and to certify the same election unto him again, and thereupon to take the fealty of the abbot, prior or bishop, and to certify the king thereof in the chancery. And the writ of *dedimus potestatem* shall be such : B

The king to his beloved I. of C. his constable of his castle of A. B. greeting : we compassionating the poverty of our beloved in Christ the sub-priores and nuns of the priory of B. (void by the death of M. of good memory, lately priores of that place) to whom we have lately given leave to elect, and we being willing to spare their labours and expences, have graciously given to you power to give the royal assent in our stead to the election made of a future priores in the said church, or in the next to be made; and when such election by the letters patent of them the said sub-priores and nuns, sealed with the seal of their chapter, to us thereupon directed, shall be presented unto you, to signify such assent by your letters to the diocesan of the place, that he may further execute that which concerns himself, and also to receive the fealty of the same priores in our name, if the said election shall happen to be canonically confirmed, and it shall thereupon appear to you by the letters patent of him the said diocesan to us thereupon directed; and therefore we command you, that you do about the premisses in form aforesaid, and certify us under your seal distinctly and openly

ly of the fealty aforesaid, when you have taken it, sending to us as well the letters of them the said sub-priores and nuns, as the letters of him the said diocesan aforesaid. Witness, &c.

C And if the dean and chapter go to the election of the bishop without the king's assent, and certify the same to the king, the king may chuse whether he will assent to the election or not; and if he will give his royal assent to the same, then he shall send a special writ to some person to take fealty of him; and the writ in the Register is such :

The king to his beloved and faithful I. his justice of Ireland, greeting : whereas our beloved in Christ the dean and chapter of the church of B. (their said church being lately void by the death of Luke of good memory, lately bishop of that place) have chosen our beloved in Christ M. I. dean of the church aforesaid, for their bishop and pastor, and have besought us by their letters patent, that we would vouchsafe to give the royal assent to the election : we (although the same dean and chapter have not first requested of us licence of electing, as the custom is) being willing, nevertheless, to do especial favour to them for this time, are induced to give the royal assent to the said election, being unwilling that they should be molested or in any wise aggrieved, although they did not request such licence; being moreover willing to do a more profitable favour to him the said elect, that his labours and expences may be spared, we have given you power, that if such election happen to be canonically confirmed by the metropolitan of the place, and it shall so appear to you by the letters patent of him the said metropolitan to us thereupon directed, then you may receive in our name the fealty of him the said elect due to us in this behalf, and may in our stead cause the temporalities of that bishoprick to be restored to him, as the custom is, having first received from the bishop elect his letters made with his seal, &c. and sealed with the seal of his chapter, that our favour which we have at present done, being of our mere liberality, may not turn to the damage of us or our heirs, &c. Witness, &c.

Licence to go to Election.

THE form of the king's licence to go to election is D thus (a):

The king to his beloved in Christ the prior and convent of the monastery of Peterborough, greeting: we are humbly supplicated on your part, that whereas your church aforesaid is destitute of the help of a pastor by the death of M. of good memory, the last abbot of that place, we would vouchsafe to grant leave to you to choose for yourselves another to be abbot and pastor of the same house; we being favourably inclined to your prayers in this behalf, have thought fit to grant unto you that licence, commanding you that you choose such a one for abbot and pastor, who is devoted to God, necessary for your church aforesaid, and profitable and faithful to us and our kingdom. In Witness whereof, &c.

And when they have made their election, they ought to E sue a writ to have the royal assent to that election, and that assent shall be made by writ directed to the bishop of the diocese, and shall be such:

The king to the venerable father in Christ P. by the same grace bishop of Lincoln, greeting: know ye, that we have given the royal assent and favour to the election lately made in the conventual church of the monastery of B. of your diocese (void by the death of W. of good memory, the last abbot of that place) of M. sub-prior of the same house; or of friar B. a monk of the same house; to be the abbot of that place; and this we signify to you by the tenor of these presents, that you may execute that which to you belongeth in this behalf.

(b) And the abbot, when he is made abbot, may sue letters patent, directed to his tenant, reciting that he is made abbot, and that the king hath restored to him the temporalties, commanding them that they be attendant upon him as their lord.

(a) See Rot. Pat. 1 Ed. 1. m. 4. *Electio cassata eo quod licentia Regis non fuit requisita, & de concilio Regis Episcopus Dunelm' præfecit Abbatem loci diocesan'.* And note; this was in Ireland.

(b) Note; The king may at this day create a bishop *per annulu' & baculu'*, or by letters patent. Mich. 13 Jac. 1. B. R. Rot. 55 or 151. adjudged.

Writ of Decies tantum.

A **T**HE writ of *Decies tantum* lieth, where any of the jury who is sworn, taketh of the one party, or of the other, or of both, to give their verdict, &c.; then he who will may sue this writ, for it is an action popular. And the writ of *decies tantum* lieth against all the jurors, although they severally take sums of money, as some more, some less.

31 H. 6. 52.
5 Ed. 4. 2.
therefore the
release of the
party is not good
against the king.
40 Ed. 3. 33. 44
Ed. 36. 36 H. 6.
pl. 1. and 101. 28.

And *decies tantum* lieth against an embraceor, if he take money, as well as against a juror, otherwise not.

Co. Lit. 369. a.
17 Ed. 4. 5. One
juror may pray
his companions

to pass with the one, or the other, because he is persuaded in conscience with him.

B (a) And an embraceor is he who cometh to the bar with the party, and talketh in the cause, or standeth there to survey the jury, or to put them in fear: but the lawyers may plead in the cause for their fees, but cannot labour the jury, and if they take monies so to do, they are embraceors.

Co. Lit. 369. a.
6 Ed. 4. 5.
13 H. 4. 16.
accordant for
Attornies.

C And the *decies tantum* lieth not against the embraceor, if he embrace and take no money; for he must take money, and also embrace, in order to grant the actions.

37 H. 6. 31.
acc. per Cur.
22 H. 6. 5.
27 H. 6. 3.

And *decies tantum* lieth against the jurors, although they give no verdict if they take money; and so if they give a true verdict, a *decies tantum* lieth if they take money.

21 H. 6. 20.
1 M. Dyer 95.

D And a *decies tantum* may be sued against the jurors and embraceors, and it may be sued against the justices of *Nisi Prius* by bill, and it may be adjourned from them *in Banco*. And the form of the writ is such:

29 H. 6. 54.
41 Ed. 3. 5.
40 Ed. 3. 33.
41 Ed. 3. 9.

E The king to his justices of the bench, greeting: whereas in our statute at Westminster, set forth in the fifth year of our reign, it is (amongst other things) ordained and appointed, that if any juror in assises, juries or inquests, take of the one party or the

(a) If an attorney promises or gives *tantum* does not lie against the jurors any thing to the jury, it is maintenance, and punishable; but a *decies* for such taking. 13 H. 4. 15. (1) 16.

(1) I find nothing in the case shewing that a *decies tantum* other, does not lie against the jurors for such taking.

Certain jurors took money of the party after their verdict, without any covenant made before, viz. each a mark, and were thereof convicted by verdict, and fined each a mark; so note, that is out of the statute, and there was no committing him to prison, 39 Aff. 19. Brion. decies tantum 15. 8 H. 6. 9 & 10. Not guilty is no plea in decies tantum: but he ought to say, that he took no money, 6 Ed. 4. 5. For in a writ of maintenance he must say, he did not maintain.

other, and of this be duly convicted, that thenceforth he shall not be put in assises, juries or inquests; and nevertheless he should be committed to prison, and further ransomed at our will; and S. and W. lately put in a certain inquest between A. demandant, and R. tenant of one messuage with the appurtenances in N. to be taken before you in the bench aforesaid, took (b) as well of the said A. as of the said R. against the form of the said statute, as we have received information: we willing that statute to be inviolably observed, command you, that having called before you the said W. and S. if it may appear to you, that they were put in the inquest aforesaid, and have taken as well of the said A. as of the aforesaid R. then having inspected the statute aforesaid, you further do thereupon, that which of right, and according to the statute aforesaid, ought to be done. *Witness, &c.*

And upon this writ the justices shall make process for the king against the party, which writ shall be a *Pene* (as it seems) to attach him to appear, and to answer the king for the same. And there is another form of writ for the party thus :

38 Aff. 9.

The king to the sheriff, &c. If W. H. shall make you secure, then put &c. I. S. I. F. and W. K. &c. that they be before us from the day of saint Michael in three weeks, wheresoever we shall then be in England, as well to answer us as the aforesaid W. H. wherefore, whereas in the parliament of lord Edward lately king of England, &c. holden at Westminster in the thirty-eighth year of his reign, amongst other things it is agreed, that if any jurors in assises, juries and other inquests to be taken between us and a party, or party and party, take any thing by themselves or others, of the party, plaintiff or defendant, to give their verdict, and upon this be convicted by process in a certain article touching jurors, made and ordained in the thirty-fourth year of the reign of our said grandfather, whether it be at the suit of the party, who for himself, or for us, or any other person, will prosecute, every one of the jurors aforesaid shall pay ten times as much as he hath

(b) *Ad grave damnum & nostri contemptum*, without saying *ad grave damnum* of the plaintiff, because it is an

action popular. 21 H. 6. 54. *vide infra* H.

received, and he who makes the suit shall have one moiety, and we the other moiety; and that all embraceors bringing or procuring such inquests in the country for gain or profit to be taken, shall be punished in the same manner and form as the jurors; and if a juror or embraceor so convicted have not whereof he can make satisfaction in form aforesaid, he shall be imprisoned for one year, as in that ordinance is more fully contained; the aforesaid I. S. I. F. W. K. jurors put on a certain inquest which was lately summoned and taken before the justices of lord Richard the Second, lately king of England after the conquest, of the bench at Westminster, by the writ of him the said late king, of record between R. F. and the aforesaid W. H. of the beasts of him the said R. taken and unjustly detained, as it was said, for giving their verdict in this behalf, and the aforesaid W. D. and L. I. embraceors of the same jury, to bring and procure the same, took of the aforesaid R. divers sums of money and other gifts, at the city of Westminster, in contempt of us, and to the great damage of him the said W. H. and against the form of the ordinance aforesaid: and have there the names of the pledges and this writ. An ambidexter is that juror or embraceor, who taketh of each party, to restore ten times as much, &c. See statute of 5 Ed. 3. c. 10. 34 Ed. 3. c. 8. 38 Ed. 3. c. 12. See too 32 H. 8. c. 9. f. 3. 6.

21 H. 6. 54.
Exception was taken for want of the words, grave damnum, &c. and disallowed, being a popular action. 41 Ed. 3. decies tantum 12.

Writ of Champerty.

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A THE writ of Champerty lieth, where a man by covenant or agreement made by writing or by word, agreeth to have parcel of the thing or land, or debt which is in suit, that shall be recovered, if the party recover, to maintain and aid him in the action, and in the manner for which he sueth.

47 Ed. 3. 6.
Hawk. P. C.
b. 1. c. 84.

(a) Then he who is grieved shall have this action against him who maintaineth the suit for the same intent; and the writ is such:

The king to his justices of the bench, greeting. whereas amongst other articles which lord Edward lately king of England, &c. granted for the amendment of the state of his people, it is ordained

(a) See 12 Ed. 3. Champerty 9. Where the king sued a writ of champerty, &c. that

that none of his ministers, nor any other person, for part of the thing which is to be had in the plea, shall take upon himself to maintain the businesses which are in the plea; nor shall any person upon any such covenant give up his right to another. And L. hath now taken upon himself to maintain (b) the plea of the plaint which is before you, by our writ between A. demandant, and B. tenant, of one messuage with the appurtenances in I. for having part of the same, against the form of the ordinance aforesaid, as we have received information: we willing that ordinance to be inviolably observed, command you, that you having inspected the tenor of the ordinance aforesaid, further cause to be done thereupon, that which of right, and according to the form of the ordinance aforesaid, ought to be done. *Witness, &c.*

(c) And upon this the justices shall award an attachment against the party out of the common pleas, &c. returnable at a certain day. B

And this suit shall be said the king's suit; but yet the party may sue an original writ out of the chancery against him, who purchaseth parcel of the land depending the plea, &c. And the statute which giveth the action is the statute of *Articuli super Chartas*, cap. 11. (d) which willeth that no minister or other for part of the things which are in plea, take upon him any matter which is in suit; nor none upon any such covenant shall give up his right; and if any do so, and be attainted thereof, then shall he forfeit unto the king so much of the lands and goods of the taker, as amountth unto the value of the part he hath purchased by such taking upon him. C

28 E. 1.

30 Aff. 5.
Br. Champ. 7.

And by those words it seemeth that he, who loseth his land pendent the suit, or giveth parcel thereof pendent the plea, to the intent aforesaid, shall be punished, as well as he who is the purchaser.

(b) Without alledging that the party had maintained in the writ, for that the writ is *ad dampnum*; Note, the justices may amend a writ directed to them, but not a writ directed to the sheriff. 22 H. 67.

(c) Note; process of outlawry is in maintenance, but not in a writ of conspiracy. 22 H. 6. 7.

(d) See 20 H. 6. 30. It is doubted if the writ lies in this case; for it is not warranted by any statute.

- D *Anno 30 Ed. 3. Lib. Aff.* It is no plea to say he did not purchase pending the plea; by which it seemeth if he purchase before the writ sued to maintain, &c. that he shall be punished, &c. by the statute; *tamen quare.* For 19 R. 2. *Champerty* 15. it is holden by all the court, that if a man bargain for any lands by deed, and afterwards an action be brought for the same land, and afterwards pending the plea he make estate to him, to whom he made the bargain, that it is not champerty.
- E A surrender made by him in the reversion pending the plea is not champerty.
- F And if a man purchase land *bonâ fide* pending the writ, and not to maintain, it is not champerty.
- G And a disseisor in an assise shall have a writ of *Champerty*, if the disseisee grant part of the land by covenant to maintain, &c.
- H And a man may give to his son in frank-marriage, or for life, and it shall not be said champerty, for the statute in the end thereof is in such manner. But that is not to be intended, that a man may not give to counsel, or his friends, money for their pleading.
- I And in a writ of *Champerty*, 17 Ed. 2. where the writ abated for false *Latin*; the defendant was put to answer the king's suit for the same matter.
- K And if a man grant a rent out of the land, pending the suit for the land, the same is champerty, although that the rent be not in demand, &c.
- L And champerty lieth as well upon covenant made by word, &c. as if it were made in writing to have parcel of the thing, &c.
- M And if the covenant be to have a rent out of the land of another which is not in suit, it is not champerty. But if he maintain, &c. he shall have a writ of *Maintenance* against him for the same, but not a writ of *Champerty*.
- N And if the officers of the court maintain any plea pleaded in their court to have part of the same, or other profit by the recovery in that action, the party grieved shall have the following writ:

The king to the sheriff, &c. If R. and M. his wife shall make you secure, &c. then put, &c. I. and W. bailiffs of our

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I

city

Br. Champ. 7.
Fitz. 11.
Fitz. Champ.
15.
9 H. 7. 18. acd
Plow Com.
465. acc.

17 Ed. 2.
Champ. 14.
50 Aff. 3. Br.
Champ. 8.
22 Ed. 3. 10.
Br. Champ. 4.
47 Ed. 3. 9.
6 Ed. 3. 3.
Fitz. Champ.
10.

Ant. 171.
30 Aff. 15.

Writ of Champerty.

city of Winchester, W. and W. that they be before our justices, &c. to shew wherefore, whereas by the common council of our realm it is provided, that none of our ministers, or any other, shall maintain pleas, complaints, or (a) businesses which are in our courts or elsewhere, of lands and tenements, or other things whatsoever, for having part of the thing demanded, or other profit, by agreement made thereupon, nor shall any one upon any such covenant give up his right to another, the aforesaid I. and W. W. and W. a certain plea of fresh force, which is before the mayor and the said bailiffs of the city aforesaid, between S. and A. his wife demandants, and the aforesaid R. and M. tenants, of one messuage with the appurtenances in the city aforesaid, in order to have part of the tenement aforesaid, and other profits thereof, have now taken upon themselves for the aforesaid S. and A. to maintain, and do maintain, to (a) the great damage of them the said R. and M. and against the form of the statute aforesaid: And have, &c.

(a) *Note*; if one gives money to another to purchase an appeal, this is not maintenance; *contra* 1 R. 2. c. 4. if he gives it after the appeal purchased, *per Markham*, 3 H. 6. 34. and one cannot maintain another, except there be some relation between them; and therefore in such case the grantor or the grantee may shew and produce evidences, &c. where the grantee is impleaded, though no voucher or warranty of charters be sued against him; so a servant or cousin to the tenant may maintain generally, 11 H. 6. 41. and in an appeal by a servant the master may retain counsel, pay fees, &c. with his own proper goods, &c. and so may

the son for the father: so giving of money, &c. to a poor man by way of alms, &c. is no maintenance; yet to stand with a stranger at the bar is maintenance. 21 H. 6. 16. So it is for a stranger to shew to the jury the truth of the matter, or to say that he will spend twenty shillings for J. S. though he does not give any money to labour the jury; yet it is maintenance, though he does not labour the jury. See 22 H. 6. 5.

(a) *Note*: If he shews any maintenance, it shall be said to be maintenance pending the whole plea, although it be only a transient act. 22 H. 6. 6. *per Cur.*

Writ upon the Statute, That none be Victualler for the Time that he is Mayor, or Sberiff, or Head-Officer of a Town or Borough.

○ **NOTE**, that by the statute of *York*, no victualler shall use the occupation to sell victual or wine in gross or by retail, so long as he is in office in any town, borough or city, to keep the assise of bread and wine, upon forfeiture, &c. 12 Ed. 2. st. 2.
c. 6.

If a man who is a victualler be chosen to be mayor, sheriff, or other officer of a town, borough or city, who by reason of his office is to keep the assise; by the statute of 3 *H. 8. cap. 8.* it is ordained, that two discreet persons of the same town, &c. who are not victuallers, be chosen and sworn to assess the assise of bread, wine, and victual, during the time that he is in his office, and then, after the price assessed of wine and victual, for the time, it shall be lawful for him who is chosen mayor or sheriff, to sell wine and victual for the time that he is

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A officer. But that statute doth not extend to *London, York, or Coventry*, to sell or retail wine or victual, but in gross they may. And by the statute of 6 *R. 2. cap. 9.* it is ordained, That victuallers be not chosen to the office of judge in towns or cities, but for want of others, and then they shall not sell victuals upon pain of forfeiture.

But it appeareth by the statute of 3 *H. 8.* what things he may do.

B And if any man in *London, York, or Coventry*, or other place, offend against those statutes, then he who is grieved may sue a writ directed to the justices of assise, commanding them to send for the parties, and to do right, &c. or the party grieved may have an attachment against the officer, mayor, sheriff or bailiff, who offend contrary to the statute, to appear before the justices in the king's bench, or before the king in the common pleas, to answer the matter. And the form of the writ unto the justices of assise is such :

Writ upon the Statute that none be victualler, &c.

The king to his beloved and faithful A. and B. justices assigned to take the assises in such a county: Whereas for the common profit of the people of our realm it is appointed, that no officer in cities or in boroughs, who by reason of his office ought to keep assises of wines or of victuals, so long as he is in that office, shall merchandize for wines nor for victuals in gross nor by retail; and now R. of B. hath given us to understand, that S. and M. bailiffs of the town aforesaid, and certain other bailiffs in the said town of S. who by reason of their office ought to keep such assise in the said town, sell wines and victuals in gross and by retail, against the form of the statute aforesaid; we, if it be so, willing to apply a remedy in this behalf, command you, that having heard the complaint of the aforesaid R. and having called the parties before you, and heard their reasons severally thereupon, and having inspected the tenor of the statute aforesaid, you cause to be done to him the said R. as well for us as for himself, due justice hereupon as ought to be done, according to the statute aforesaid. Witness, &c.

And if the action be brought upon the statute of York, C then he who sueth the action shall have the third part, and the king shall have the residue of the victuals which is forfeited. And also the form of the writ of attachment is such:

The king to the sheriff of Yorkshire, greeting: Put, &c. D P. T. of Richmond, lately bailiff of the town of Richmond, that he be before us, &c. to shew wherefore, whereas for the common profit of our realm of England it is agreed by the common council of the same realm, that no officer, &c. by retail, under the forfeiture of the same, the aforesaid P. while he was bailiff of the said town of Richmond, oftentimes merchanaized in wines and divers other victuals, to the value of one hundred pounds, in the aforesaid town of Richmond, as well in gross as in retail, and there sold them, as it is said, in manifest contempt of us, and to the great damage of our people, and against the form of the ordinance aforesaid. And have, &c. Witness, &c.

*Writ upon the Statute of Articuli Cleri, that
he do not distrain in the Glebe of Parsons;
nor in the King's Highway.*

E **T**H E writ that no distress be taken in the glebe land of the parson by the sheriff or other officer, is grounded upon the statute of *Articuli Cleri*, cap. 9. by which it appeareth, that the sheriff or other person shall (a) not distrain in the king's highway, nor in the glebes of ancient times given to rectories, and if any sheriff or other person do the contrary, then he who is distrained may sue this writ.

F And if a lay person be distrained in the king's highway, &c. he shall have an action upon the statute of *Marlebridge*. But a spiritual person shall have his action upon this statute. But by the statute of *Marlebridge* the king's officers may distrain in the highway. And after the writ delivered to the sheriff, if he be distrained again, he shall have an *alias* and *pluries*, and thereupon an attachment. And this writ is in itself a prohibition to the sheriff; and the writ is such:

See *Marlebr.*
cap. 55. V. 17
Ed. 5. 43. *Fitz*
Rescous 14. the
party may res-
cous.

The king to the sheriff, &c. greeting: Whereas in the articles of the prelates and clergy of our realm granted by Lord Edward lately king of England, our grandfather, with the assent of the nobles and great men of our realm, it is contained

(a) See where a bailiff by warranty on a commission out of the exchequer to levy a sum certain on the dean and chapter of C. on a tax granted to the king, distrained in parcel of the parsonage of the church of K. which was a sanctuary, and the dean and chapter brought a general writ of trespass; and for that he took it by virtue of a commission and grant, though nothing had been due; yet he shall not be said to come *vi & armis & contra pacem*; and therefore the plaintiff ought to have aided himself by a special writ, or at least by a replevin; and

the plaintiff took nothing by his writ. 26 *Ed.* 3. 70. and so note the liberty of the church is not exempted from temporal jurisdiction. See in the like case where in trespass *contra pacem*, for distraining in a sanctuary, the defendant justifies as the king's bailiff for issues lost by the prior, and that a precept from sheriff came to the plaintiff, commanding him to levy it, &c. and that he entered, &c. for that he could not find any distress elsewhere, &c. and the writ was abated for that cause, *i. e.* it not being *contra pacem*. 28 *Ed.* 3. 97.

until she have paid a fine to the king, which is commonly one year's value of the land which she holdeth in dower; and that is by the statute of *Prærog. Regis c. 3.* But it appears by the Register, that the king ought to seize as well the land of the husband, as the land of the wife which she holdeth in dower.

Stamf. 9, 19.
It is not law.

And by the same reason, if the wife have other lands of her own inheritance, besides the land which she holdeth in dower; the king may seize that land also; and the writ in the Register seize the land, is such:

The king to his escheator, &c. Because Margaret, who was the wife of Edward Baron Stafford deceased, who held of us in chief, hath married herself to Thomas of P. without the licence of us, or of our beloved and faithful Ralph Basslet, to whom we granted that which belonged to us of the marriage aforesaid, as we have received information by the complaint of him the said Ralph; we command you, if so it is, that then without delay you seize into our hand all the lands and tenements, as well of him the said Thomas as of the aforesaid M. in your bailiwick, and cause them to be kept safely, until you shall have other matter in command thereupon from us. Witness, &c.

But now by the statute of 23 H. 8. c. 46. the composition is given to the master of the wards with three of the counsel of that court: so they may tax a reasonable fine at their discretion, according to the statute of *prærogativa regis.* Stamf. 19. acc.

And it appeareth by this writ, that the king may grant D the marriages of his widows, as well as of his wards; and that the woman may agree with him to whom the marriage is granted, and if she marry by his assent or licence it seemeth she shall not pay a fine. And if she marry without licence, then he who marrieth her doth the king or his grantee wrong; and that wrong seemeth to be the cause, that the king shall seize the land of him who marrieth the king's widow without licence.

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And it appeareth by the Register, that the said *Thomas P.* may agree with the said *Ralph Basslet*, for which the king shall quit the possession; as appeareth *rotulo clerum anno 8 Ed. 2.* But yet I conceive, that the king should seize only the lands which the woman holdeth in dower, because the statute giveth no more, but that he shall seize that which

which she holdeth in dower; for if she will not claim or sue for dower, it seemeth she shall not be fined, nor any of her land seized: and also I conceive, that the king cannot grant the marriage of his widows as he may do of his wards; for if the widow will live single and not marry, she may so do, and shall not pay any fine. *Ideo quare.*

Bro. Fines 63. cont. If she gets dower at the hands of the heir or of the commitee without oath, quare, whether she may marry without licence. Stamf. 19. No, because presently upon

the assignment she is a tenant to the king, and not to the heir, Stamf. Prærog. 18. 40. Aff. 36. The king's widow had dower without assignment. Vide Stamf. 18. 35 H. 6. 50.

Writ upon the Statute de Anno Primo Ed. 3. c. 12 & 13. Where the King's Tenant alieneth without Licence.

A **N**OTE; where the king's tenant who holdeth of the king in chief, as of his crown, alieneth the land which he so holdeth of him (a) for life, or in tail, or in fee, without the king's licence, then the king ought to seize the land for a fine, &c. But if a man hold of the king, as of any honour, or castle, or manor being in his hands, which he hath by descent from any collateral ancestor, and the tenant alien, as above, his lands without licence granted him by the king; then if the sheriff or escheator distrain or disturb the possession of the alienee, he shall have a writ upon the statute of 1 Ed. 3. cap. 13. which shall be such:

Br. Tenure 34. 45 Ed. 3. 6.

The king to his escheator beyond Trent; or, to his escheator in the county of S. greeting: Whereas it is appointed by the common council of our realm, that no man be grieved by reason of purchasing lands and tenements which are holden of us as of honours, (the licence of our progenitors formerly kings of England, or of us for this purpose not being obtained); we command you, that you do not disturb R. the son of I. of C. chaplain, by reason of the purchase which he made in the time

Br. Tenure 33.

(a) See *contra* 24 Ed. 3. 71. but 45 Ed. 3. 6. accords; yet see here *infra*, that on an alienation for life or in tail, a *contra formam collationis* does not lie.

of Lord Edward lately king of England, of Robert of Samby Knt. of one oxgang of land with the appurtenances in E. which he holds of us in chief as of the honour of T. as it is said, if so they are holden of us, against the form of the statute above-mentioned. *Witness, &c.*

Br. Tenure 32.
Stamf. 29.

And upon that he shall sue an *alias* and *pluries, vel causam nobis significes, &c.* and thereupon an attachment against the escheator or sheriff, if he distrain or disturb him after that writ directed unto them, if the lands be holden as above is said. But it appeareth by that writ that a man may hold of the king *in capite*, as of an honour, but the same is against the Register, in the beginning of the Register, as appeareth by the *præcipe in capite*: but the practice at this day is to take a fine of him who holdeth of the king, of any honour, which is the ancient inheritance of the king, and who alieneth his land in fee, without licence: but *quære* what in right ought to be done in that case.

*Writ quod Clerici non eligantur in Officio
Ballivi, &c. pro Terris suis.*

IF a man, who holdeth certain lands or tenements, by reason of his said lands ought to be chosen bailiff, or beadle, or reeve, or in such like office for his lands; if such a man be made a clerk, or be within holy orders, then he ought not to be chosen into such office for his lands. And if he be elected to such office of bailiff or beadle, &c. he shall have a writ to discharge him, which shall be such:

The king to the bailiffs of I. of L. greeting: Whereas according to the law and custom of our realm of England clerks ordained in holy orders ought not to be chosen to the office of bailiff or beadle, nor have hitherto been accustomed so to be; and now we have received information on the behalf of F. of M. master of our hospital of C. chaplain, that you have now of late chosen him the said master to the office of bailiff or beadle of the manor aforesaid, and endeavour to compel him to take upon him that office, to the great damage of him the said master, and
against

against the law and custom abovesaid; whereupon he hath besought a remedy to be provided for him by us; and because it is not consonant to right, that the said master (who continually serveth us in the said hospital for our safe estate, and for the souls of our ancestors some time kings of England, and for the estate of the said hospital, and in singing masses, in alms, and other pious works to be maintained and sustained in the said hospital) should be compelled to stay elsewhere out of the same hospital about secular affairs; we command you, that you altogether supersede the distress and compulsion (if any shall have been made upon him the said master to take upon him the office of bailiff or bedel in the manor aforesaid, and release the same without delay, and that the monies, if any for amercements or otherwise for the cause aforesaid, you shall have levied upon him, you cause to be restored to the same master without delay, under the peril that may fall thereon. *Witness, &c.* And upon this he may have an alias and a pluries, and attachment.

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Writ that Parsons or Prebendaries should not be charged for their Goods in their Possessions to Fifteenths, which are annexed to their Prebends.

A THE (a) writ for prebendaries or other spiritual persons to be discharged for their goods of the benefice in Bro. Quind. 184.

(a) See a writ in the *Register* 181. that charges those who are tenants in ancient demesne, and those who are burgesses, with tenths, and other towns only with fifteenths, except the grant were special. *Rot. Parl.* 20 *Ed.* 3. Nu. 24. *Note*; If *A.* leases to *B.* lands for years which lie in *C.* and *D.* *B.* sows the land in *C.* and after a fifteenth is granted, and *B.* severs and inns the corn; and *B.* having beasts commoning in *D.* which are levant and couchant in *C.* 1. If *B.* be taxed to the fifteenth by his goods.

&c. this shall discharge *A.* so that he shall not pay the fifteenth for the rent. 7 *H.* 4. 33. 2. If the corn is severed and inned at *D.* after the fifteenth granted, if it be before the tax thereof, and he is taxed for those goods after the inning of them, the tax is void, for they shall be taxed in *D.* 21 *Ed.* 3. 42. 3. *B.* shall not be taxed in *D.* for the beasts which are there commoning, if they are not levant and couchant there, 18 *Ed.* 3. 11. 4. he may be distrained in *C.* by the collector of the town of *D.* after a tax so made

in their possessions lieth, where the sheriff or collectors of the fifteenths will distrain the parsons or prebendaries in their spiritual possessions by their goods being in their possessions, to be contributory to the payment of taxes or fifteenths granted, &c. And if they be distrained, they shall have such writ :

The king to the taxers of the tenths and fifteenths to us last granted by the commonalty of our realm of England in the county of Gloucester, greeting: It is shewed unto us on the behalf of W. prebendary of the prebend of B. in the church of S. that by reason of the tenths and fifteenths aforesaid granted to us by the laity, you unjustly intend to assess, tax and levy upon the proper goods of him the said W. of the temporalities annexed to and issuing out of his said prebend (which are taxed to the tenth amongst the spirituals in all taxations to the payments of such tenths, and of which tenths have been accustomed to be given) the aforesaid tenth and fifteenth among the laity, to the great damage and grievance of him the said W.; and because we will not that the same W. be charged for such his goods (of which he gives us the tenth amongst the spirituals) for such tenth and fifteenth granted to us by the laity; we command you, that you in no wise molest or aggrieve him the said W. in his goods which are taxed to the tenth amongst the spirituals (and of which he gives us the tenth as is aforesaid) by reason of the tenth and fifteenth aforesaid granted to us by the laity, and the distress, if you shall have caused any to be made upon him on that occasion, cause to be released to him without delay: provided that he answer to us for such tenth and fifteenth of the lands and tenements, if any were purchased by him the aforesaid W. or his predecessors in the said (a) prebend, after the twentieth year

made in D. 2 H. 4. *Quind.* 3. and *Note*, well; when collectors are made of fifteenths, they may distrain a man without assessment, by the portion of his goods according to the estimation; and if he be estimated more than is reasonable, he shall have a plea to discharge himself from the surplussage. 20 Ed. 3. *Assy.* 130.

(a) *Note*; That in the twentieth year of K. Ed. 1. all Ecclesiastical benefices were taxed; and therefore according to that rate they are charged to the king, on a tenth granted by convocation, (they are discharged of tenths, &c. there) 17 H. 4. 33. But if an abbot be seised of a feignory, 20 Ed. 1. and after that time the tenancy

year of lord Edward some time king of England, our grandfather, according to the goods and chattels being in the said lands and tenements and coming forth of the same, as is just. Witness, &c. And upon that he shall have an alias and pluries, and attachment.

Writs directed to make Proclamation, that none cast Filth or Dung into Ditches or Rivers near Cities or Boroughs, made Anno 12 R. 2. cap. 13.

B **I**F any one cast any dung, filth or entrails of cattle into ditches, waters, or other places which are next to any city, borough, or town, any person may sue forth a writ directed unto the mayor, or sheriff or bailiff of such town, &c. that they make proclamation that none so do, and that those that have so done, cause the same to be removed and carried away from thence: and this writ is founded upon the statute of 12 R. 2. cap. 13. and the writ is such:

nancy escheats, as to that it is taxable among the laity, but the seigniory was annexed to the spirituality. *Anno 20 Ed. 1. quod vide*; and see 29 Ed. 3. 20. but if an abbot was seised at that time, and afterwards made a lease at will, or for life or years, the lessee shall not pay the fifteenth, for it is the abbot's land, 29 Ed. 3. *Quinzime* 1. also if the abbot was seised of a grange, *Anno 20 Ed. 1.* and afterwards habitations are made there, and the grange becomes a town, they shall not pay to the fifteenth, because the abbot who is lord pays tenths with the clergy for the same land. 11 H. 4. 36. *per Thirn.* See *Rot. Parl.* 15 Ed. 3. Art. 25 & 32. Possessions of churches purchased and appropriated, not taxed among other temporalities in the tax of tenths, but charged with fifteenths, &c.

I

See *Rot. Parl.* 20 Ed. 3. Art. 44. Religious men who paid tenths among the clerks, and only paid them 20 Ed. 1. discharged of fifteenths, for the possessions of which they paid tenths and of the lands whereof they did not pay tenths being charged with fifteenths.

See 11 H. 4. 37. *per Thirn.* If an abbot had a manor, *Anno 20 Ed. 1.* for which he was charged with tenths, and afterwards aliens it: now the alienee shall pay to the fifteenth; but if it comes to the abbot again, he shall not pay to the fifteenth assessed after it so returned; but if the alienee was taxed to the fifteenth before, and it afterwards comes to the abbot, he may distrain for it, otherwise if the abbot comes thereto by his reversion. *Rot. Parl.* 1 R. 2. Nu. 102.

The

The king to his bailiffs of the town of Newcastle upon Tyne, greeting : *Whereas in the statute set forth in our parliament held at Cambridge in the twelfth year of our reign, it is amongst other things contained, that proclamation be made as well in the city of London as in other cities, boroughs, towns, and the suburbs thereof, where it shall be needful, as well within liberties as without, that all they who cast and lay annoyances, dung, garbages, entrails or other ordure in ditches, rivers, waters and other places within, about and near the several cities, boroughs and towns of our realm of England and the suburbs thereof shall cause them wholly to be removed and carried away before the feast of, &c. under the penalty of twenty pounds to be paid to us ; and that the mayors and bailiffs of every such city, borough and town, and also the bailiffs of liberties, shall compel them to do this under the like pain : and moreover that proclamation shall be made as well in the said city of London as in other cities, boroughs, towns and other places abovenamed, that none of whatsoever condition he be, cause to be cast or put thenceforth any such annoyance, garbage, dung, entrails or any other ordure in the ditches, rivers, waters and places abovesaid ; and if any shall do this, he shall be called before the chancellor by writ at his suit that will complain thereof, and if he be found guilty, he shall be punished at the discretion of the chancellor, as in the statute aforesaid is more fully contained ; and now on the behalf of our beloved in Christ the prior and friars of the order of hermits of Saint Augustin of the said town of Newcastle upon Tyne, we understand, that many men of the same town have cast and laid dung, garbage, entrails and other ordures in a certain way which leads near the mansion of the aforesaid prior and friars in the same town, to the nuisance of them the said prior and friars and others conversant and passing there, and to the manifest peril of the town, and against the form of the statute aforesaid ; we willing that statute to be inviolably observed, command you, strictly enjoining that you make proclamation in the said town on our behalf, that none, of whatsoever condition he shall be, cast or lay any annoyances, garbage, dung, entrails or ordures whatsoever in the aforesaid way, and that all and every one who shall cast or lay such annoyances there, do remove and*
carry

carry away the same without delay, according to the form of the statute aforesaid. *Witness, &c.*

And it seemeth, that the chancellor may award a *pone* against him, or an attachment, to make him come before him in the chancery; and there punish him according to his discretion. And it seemeth, that he who is grieved by the *nuisance* may have an action upon the statute against him who did the *nuisance*, and recover damages for the nuisance done to him; *tamen quære*.

But by the common law, if a man do any thing to the annoyance of my freehold, or of my land in which I have an estate for years, I shall have an action upon the case for the same, or a writ of *nuisance* if it be annoyance unto my freehold.

Writ of Assise of Novel Disseisin.

A THE writ of *assise of novel disseisin* lieth where tenant for life, or tenant in fee-simple, or in tail, is disseised of his lands or tenements, or put out thereof against his will, this is a disseisin; and he shall have an *assise of novel disseisin* of that ouster, &c.

B And the rule in the Register is, that if a man will bring (a) an *assise of novel disseisin* of lands in the county where the common pleas is; that then the assise shall be brought in the common pleas; and if the common pleas be in one

(a) See *Mag. Chart. c. 12.* that recognitions of *novel disseisins*, and *de mortdauncestor* shall not be taken but in the proper county. A cryer of the common pleas for life, the Court then held *in com'* S. is disseised, and brings his assise, then the Court is removed to *Westminster*; yet the plea shall be continued in C. B. and the assise shall be taken by *nisi prius* in the county of S. where the disseisin was. 7 H. 4. 45. 8 Ed. 4. 16. 19 Aff. 45. and although the Court be removed, and also the office; yet the assise ought to be

brought and the view made where the disseisin commenced, and he may well enough recover the seisin there. 8 Ed. 4. 10. 7 Ed. 3. 57. *Nich. Dagworth's* case. See *Dyer* 250. judgment may be given in C. B. on a verdict adjourned thither for difficulty; and so on a foreign issue where it is found over, &c. if the plaintiff will release his damages. See an adjournment of an assise from one county to another, without any resummons. *Dyer* 375. L. 5 Ed. 4. 134. *Case de com' Salop.* 22 H. 6. 11.

county, and the king's bench in another county, then the assise shall be brought and returnable in the king's bench; and if both the benches be in one county, the usage is to bring the assise in the common pleas or king's bench, at pleasure; but that, as I think, is against the rule in the Register.

See before 109.
acc. in attain.
Vide 7 Aff. 7.
Br. Assise 120.

And the *assise of mortdauncester* shall be brought in the C like manner, as the *assise of novel disseisin* shall be, before the justices of the common pleas or king's bench; and in the assise a day certain shall be put; thus; *Usque in diem Jovis post quindenam, &c.* But in *assises of mortdauncester* the common day shall be *quindenam, &c. vel in octabis, &c.* as in other pleas.

30 Aff. 44. B.
assise 116. for
their patent
ought to be dated
fifteen days be-
fore the day.

As in an *assise of novel disseisin* in the common pleas or in the king's bench, the justices may give day out of term, thus, *usque ad diem Jovis proxime post festum S. Lucie, &c.* because that the assise hath not any day of return in the term, but day certain, which the justices will give, and that may D as well be out of term as in term. And by the statute of (b) *articuli super chartas*, in every writ of summons and attachment there ought to be fifteen days betwixt the date and the return thereof; but in *assise of novel disseisin* in the common pleas or in the king's bench there need not be fifteen days between the date and return thereof, as it seemeth by the statute.

22 Aff. 9.
29 Aff. 40. Br.
Assise 300.

And in an *assise of novel disseisin* sued before justices in E eyre, or before justices of the king's bench or common pleas, the plaintiff ought not to have any patent to the justices, for they have authority without a patent; and so have justices of assise authority to take *assise of novel disseisin* without any patent made unto them by the statute of *Westm. 2. cap. 13.* but then the form of the writ is such:

The king to the sheriff, &c. (a) A. hath complained unto us, that B. unjustly and without judgment hath disseised him of

(b) It seems that the statute *articuli super chartis* gives the averment of not attached by fifteen days. 10 Aff. 40. 12 Aff. 4. For before that statute,

persons so attached were not to have the summons of fifteen days. *Bract. l. 4. c. 16. 182.*

(a) If the writ be *monstravit nobis,* it

of his freehold in C. after the first (b) passage of Lord King Henry, Son of King J. into Gascoigne; and therefore we command you, that if the aforesaid A. shall make you secure to prosecute his claim, then cause, that tenement to be re-seized, and the chattels which were taken in it, and the same tenement with the chattels to be in peace until the first assise, when our justices shall come into those parts, and in the mean time cause twelve free and lawful men of that venue to view that (c) tenement and their names to be put into the writ, and summon them by good summoners, that they be before the justices aforesaid at the assise aforesaid ready to make recognizance thereupon, and put by gages and (d) safe pledges the aforesaid B. or (if he shall not be found) his bailiff, that he may be then there to hear that recognizance, &c. And have there the summoners, the names of the pledges, and this writ, &c.

Which proves that the bailiff is party quodammodo. Vide 7 Aff. 12. Br. Assise 122.

G And if the writ of assise be brought before other justices than before the justices of assise in the same county, then the writ shall be in another form, which is such:

Rct. Parl. 25 Ed. 3. no. 35.

H The king to the sheriff, &c. A. and B. his wife, have complained unto us that C. unjustly, &c. hath (e) disseised them; or,

it shall abate. 11 H. 6. 20. and so if *injuste & sine judicio* be omitted; so if the writ comprise the certainty of the demand, *quare*.

(b) See *West. 1. cap. 38*. Yet it seems though those words are not in the writ, if it appears to the Court by the plea, that the disseisin was after that time, the writ is good. *Note*; It is a good plea to say, that he was not disseised after the time of limitation. 13 H. 4. 16.

(c) *Note*; If it appears by examination, that the jurors have had a view of the tenements of their own proper notice, without the calling them thereto by the sheriff, &c. it is well enough. *Dyer* 61.

(d) If any stranger finds pledges it suffices, for he shall be intended bailiff, 8 H. 4. 6. and if the bailiff returns attached *per plegios*, it is well, though

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it be not said *quod defendens non est inventus*, for it shall be intended. See 26 Aff. 33. 28 Aff. 40. and if the defendant appears, it is sufficient though he was only summoned by fifteen days, and not attached by pledges or goods. 34 Aff. 1. and *Note*; four or more defendants may find two pledges in the county. 8 H. 4. 6. and *ibid.* the trial of the attachment shall be by oath of the bailiffs; and *per cur.* if the defendant be returned *nihil*, the assise shall be taken by default, without speaking with the bailiff. 7 Aff. 12. and *nihil habet* is a good return in assise, without saying *non est inventus*, for he may be attached by pledges. 11 H. 6. 4. and see there *fol. 3.* though *nihil* be returned, yet the assise shall be awarded.

(e) A writ brought by baron and feme, was *quod disseisavit eos*; where the

or, the aforesaid B. of her freehold in N. and therefore we command you, that if the said A. and B. shall make you secure &c. in peace until a certain day, which our beloved and faithful R. and F. shall make known to you, and in the mean time, &c. and summon, &c. that they may be then before the aforesaid R. and F. and those whom we shall have associated unto them, at a certain place which the same R. and F. shall make known to you, ready thereupon to make recognizance. And put, &c.

And upon that writ they ought to have a special patent I directed to the same justices, because they are not the justices of assise of that county, and the patent shall be such:

(a) The king to his beloved and faithful R. and F. greet- K ing: Know ye, that we have constituted you our justices, together with those whom we have associated unto you, to take the assise of novel disseisin which A. and B. his wife have arraigned before you by our writ against C. of tenements in N. and therefore we command you, that at a certain day and place [178] which you shall appoint for this purpose, you take that assise, doing thereupon that which belongs to justice, according to the law and custom of our realm, saving to us the amercements forthcoming thereof: for we have commanded our sheriff of Lincolnshire, that he cause to come before you that assise at a certain day and place, whereof you shall give him notice. In witness whereof we have caused these our letters to be made patent. Witness, &c.

And if the writ aforesaid be directed to the sheriff, and A those who are assigned by the writ to be justices of that assise, be the justices of assise in the same county, then it seemeth the party needeth not to have a special patent to

the disseisin was before the coverture, it shall abate by plea of the tenant; but if not guilty be pleaded, and this matter be found by verdict, it shall not abate the writ. 14 H. 6. 7 H.

2. - 44. 7. 24. - 4 Aff. 6. 24 Ed. 3. 50. and yet if a feme disseiseth, and then takes husband, the writ shall be *quod disseisaverunt*. 7 H. 7. 2. 4 Ed. 4. 17.

(a) Note; The patent remains with the plaintiff. 33 H. 6. *Assise* 460. the justices may call the jury, though the party does not shew his patent. For if he brings his patent before the assise ought to be awarded, it is time enough. 3 H. 4. *Aff.* 358. See 8 R. 2. *Aff.* 368. 34 *Aff.* 8.

them

them for that assise; for their (b) general patent to them to take all assises shall be sufficient for that assise and all other assises: for the justices of assise use only to make one general precept for all assises according to their general commission and patent; and not to make a special precept for every special writ directed to the sheriff, and especial patent made unto them to take any special assise for such party. 29 Ass. 40.

B And if an assise be brought in the common pleas or king's bench, there the form of the writ is:

A. *hath complained unto us, that B. unjustly, &c. (until) in peace until Saturday in the Octave of Saint Michael next coming; or thus, until Saturday next after the Morrow of All Souls, next coming, and in the mean time, &c. and summon, &c. that, &c. before us at W. or before our justices at W. ready thereupon, &c.*

C And in assise when a party purchaseth the writ, he ought to find sureties in the chancery; and then the form of the writ is such:

The king, &c. A. hath complained unto us that, &c. unjustly, &c. disseised him of his freehold in N. after the first passage of Lord King Henry, Son of King J. into Gascoigne; and because the aforesaid A. hath made us secure to prosecute his claim by C. and D. in your county, we command you, that you cause that tenement to be re seized, &c. as above.

And another form of the writ against a body corporate is thus (c):

A.

(b) And yet see 5 Ed. 4. 133. a general patent is sufficient for all assises arraigned before the patent, but for those arraigned after the general patent, there ought to be a special patent, *Quere.* 29 Ass. 40.

(c) Note; An assise of rent lies against the pernor only, or against all, or against the one, or the other. 9 Ed. 4. 11. But if an assise brought against the pernor and the tenant the tertenant shall not plead in,

bar. 12 H. 4. 21. Ass. 1.

Note; An assise of rent service may be brought against the tenant in right though he be not tenant of the land, as against the mesne, 17 Ed. 3. 69. and in such case, though he be disseised. 9 Ed. 3. 8, or if he makes a gift in tail, *contra* if he makes a feoffment, though the feoffee does not give notice. 3 Ed. 3. 21. See 33 Ed. 3. Ass. 456. the pernor shall be named, else it shall abate. Note; In a *præcipe* of

33 Ed. 1. Brief.
921. 22 H. 6.
24. 5 Ed. 2. A-
vowry 206. 19
Ed. 1. Brief 468.
contra. 3 Aff.
pl. 18. Plow. 86.
b. 11 Ec. 2.
Garranty 83.

A. hath complained to us, that B. mayor of the city of C. D
and the commonalty of the same city, unjustly, &c. Or thus;
A. hath complained unto us, that I. abbot of the blessed Mary
of York, and friar P. of C. a monk of the said abbey, and
friar I. of P. a convert of the same house, unjustly, &c. Or
thus; C. chaplain of the chauntry in the church of N. hath
complained unto us, that B. unjustly, &c.

If a man have a rent-service, or a rent-charge, or rent-
seck, issuing out of land for life, in tail or in fee, if he be
disseised of the rent, he shall have an assise and the writ
shall be general, *that unjustly, &c. he hath disseised him of his*
freehold in N. and he shall make his title to the rent.

(a) And the rule in the Register is, that when a man
is disseised of a rent-charge or of a rent-seck, it behoveth
that all the tenants of the tenements charged be named (b)
in the writ of assise, and all the land put in view, although
he were disseised but by one tenant only; but it is other-
wise of a rent-service.

9 H. 5. 13. 7
Ed. 6. 89. 13
Aff. 38. West. 1.
c. 31.

And in an assise of *novel disseisin* a man shall not vouch E
any one, unless he be named in the writ, and present when
he is vouched, and will presently enter into the war-
ranty, and warrant the land, &c.

1 Inst. 20.
b. 35 H. 6. 7.
3 Ed. 3. Aff.
175. 401. 9 H.
4. 6. 8 Ed. 4.
16. 22 H. 6. 4.
6 Aff. 12. Br.
Assise 145.

(c) But in an assise of *Mortdauncestor* he may vouch at F
large. And a man shall have an assise of *novel disseisin* of
an office, if he have the same for life; and the writ shall
be *That he hath disseised him of his freehold in D*; and he shall
make his plaint of the office, and shew his title in the
plaint.

Of rent against A. who pleads that the
tenements put in view are three acres,
whereout the rent is supposed to issue,
and that one B. holds a mease not
named, it is no plea without saying
that he is pernor of the rent: ad-
judged. 21 Ed. 3. 33. An assise lies
of tithes against the pernor, without
naming the tenant, for tithes are not
issuing out of the land. Dyer 84. See
Sir Nicholas Aston's case; if A. has a
rent, and B. levies the rent, claiming
the rent, and it is not paid to A. B. his
pernor, and the assise must be brought
against him, and not only against the

tenant. *per Fitzb.* But *Sbard* denied
it, and said, it could not be intended the
same rent. 30 Aff. 5. See it brought
against the pernor alone. 22 H. 6. 23.

(a) And so it is, though it be a
rent-seck, which once was a rent-
service.

(b) Although he be out of court by
his default. 13 Aff. 1. and there be a
recovery in value. 16 Aff. 19. and he
shall vouch or have aid of him, who is
named in the writ only. 9 H. 5. 13.

(c) See the notes at the end of this
writ of assise of offices, &c.

And so if a man have any profit granted unto him out of land for life, or in fee, as to have the fruit of apples, nuts, acorns, or other profits whatsoever, he shall have an assise of them, if he be disseised of them, as appeareth by the statute of *West. 2. cap. 25. (d)*.

G And so of toll, tonage, passage, pontage, pannage, and other like. And if tenant by statute-merchant, or by (e) statute-staple, be disseised of any lands which they have in execution until their debts be levied, they shall have an assise of *Novel Disseisin*, and recover their term; and yet they shall have but a chattel, *scil'* the land for the certain term of years, but that is by reason of statutes thereof made.

31 Ed. 1.
Ass. 440.

And so a man shall have an assise, &c. of the land which he hath in execution by *Elegit*, if he be deforced thereof, by the statute of *West. 2. cap. 18*.

H (a) And by the statute of *West. 2. cap. 25*. if one with his cattle eat the several pasture of another, the other may have an assise of the pasture, and waive the possession, although the other do not claim the freehold of the land.

I And so if the lord, or any other man who hath a rent issuing out of the lands distrain often for the rent or service where none is behind, the tenant may have an assise for this distress by (b) the common law. And this assise lieth between the lord and the tenant, or between the lord paramount and the tenant paravail, as appeareth 27 *Ass. 51*. But it seemeth reasonable, that the tenant have the assise of *Sovient foits* distrained against him who claimeth a rent-charge out of land; *tamen quære*. And if a man sueth divers assises

27 Assise 51.
Br. Ass. 274.
28 Ass. 50, 6.
Br. Ass. 291.
9 H. 7. 5.
14 H. 6. 26
27 Ass. 21.
The Plaintiff
distrained for
fealty pending a
cessavit, &c. 20
Ed. 3. Ass. 33.

(d) And so of estovers, &c. if the tertenant cuts down the wood, &c. 2 *H. 4. 11*. but the statute does not extend to an easement as a way, &c. thereof an assise, does not lie. 34 *Ass. 14*. See a plaint of estovers in time of *R. 2. F. Grants 104*.

(e) If the tenant by statute be ousted, the tenant of the freehold shall have an assise, and also the tenant by the statute, and if the one recovers first, the writ of the other shall abate. 12 *H. 6. 4*.

(a) See by the statute 32 *H. 8*. in an assise for tithes, the writ shall be *de libero tenemento*, and he shall make a special plaint and title therein. *Dyer. 83*.

(b) See 28 *Ass. 50*. No assise lies, for too often or excessive distraining, or for distraining for homage, fealty or suit. For, for these duties no distress can be excessive. 42 *Ed. 3. 26*. And in this writ a stranger being tertenant may plead *Rien arrear*. See 27 *Ass. 57. 28 Ass. 50. 20 Ed. 3. Ass. 33*.

against one man in several towns, or against several men in several towns, he may sue forth a patent to the justices for all those assises; and the form of the patent shall be such:

[179]

The king to his beloved, &c. greeting: know ye, that we have constituted you, &c. to take the assise of novel disseisin, &c. which, &c. of tenements in N. and to take the assise of novel disseisin which A. &c. before you by our other writ against, &c. of tenements. And so if there shall be more.

5 Ed. 4. 2.
12 Ed. 3. 7.
49 Ed. 3. 15.
Litt. 129.
8 Ass. pl. 4.
29 Assise 22.
Br. Ass. 302.
Fitz. 288.
47 Ed. 3. 7.
12 Ed. 4. 11.
29 Ass. 52.

If a man be seised of parcel of a rent which is payable at a day, and afterwards the tenant will not pay the residue of the same rent which is due at the same day, he who ought to have the rent shall have an assise of *Novel Disseisin* of the whole rent, as well of that which he is seised of, as of the residue, and that seisin of parcel of the rent shall be to him a seisin of the whole rent. And if a (c) man distrain for his rent, pendent an assise for the same rent, he shall abate his assise; but if he distrain for homage, pendent the assise for rent, which is parcel of that service, that shall not abate the assise, for an assise doth not lie of homage.

Quere, if for frequent distress 28

Ass. 50.
Br. Ass. 291.
8 H. 6. 24.
34 H. 6. 46.
2 R. 2.
2 H. 4. 3.
3 Ed. 3. 74.
49 Ed. 3. 14.
15 Ass. 44.
49 Ass. 5.
Dyer 193.
7 Ass. 18.
Br. Ass. 127.
11 Ass. 13.

ibid. 168. 18 Ass. 4. 20. per Cur'. 14 Ass. 1. 11 Ass. 30. 18 Ass. 4. 42, 43. 15 H. 7. 10. If there be sufficient at the time of the improvement, although not after, it is not material, Ass. 18.

And seisin of rent by an abbot shall be a sufficient seisin for the successor to have assise of the rent, if he be denied the same, or rescous made against him; but seisin of rent of the father shall not be sufficient seisin to the son to have an assise of the rent, if rescous be made unto him of the rent; because the abbot hath the rent in the right of his house, which house continueth, and so the seisin of the predecessor, is the seisin of the successor, but the father hath the rent in his own right; and the son shall have the same in his own right; and then he ought to have a new seisin. And a man may

(c) But it is otherwise, if the bailiff distrains without his commandment or consent, 20 Ed. 2. Ass. 397. the grantee of a rent charge being seised, demanded the rent on the land, the tenant not being there, it is not paid, he distrains, a stranger without the tenant's assent, makes rescous; an as-

sisse on this being brought against the tenant, it abated, because tho' non-payment be a disseisin, yet when he is distrained afterwards the disseisin is purged, and he shall have an assise alone, but the rescous, and the rescussor ought to be named. 29 Ass. 52 and 59. *Vide post.* K.

have

D have one assise of several rents, or of land and rent, and offices and profits appendre in his soil, and all in one writ.

E (a) And the lord paramount may have common appendant in the lands of the tenant paravail to his lands which he hath by purchase; and the tenant paravail may improve against the lord paramount, as well as he may against other commoner or neighbour, if he leave him sufficient common. *Quod vide M. 19 Ed. 3. 1. assise in the abridgment (b).*

F And the seisin of the guardian shall give seisin to the ward to have an assise, if he be disseised. And so of tenant by statute-merchant. And seisin by the hands of tenant for life of lands out of which a rent is issuing, is a sufficient seisin to have an assise of the rent, if it be afterwards denied.

2 Ed. 4. 5.
22 Ed. 4. 9.
14. 16.
12 Ed. 4. 5.
2 H. 6. 2.

And so it seemeth (c) payment of the rent by the tenant for years of the land is a sufficient seisin to have an assise of the rent, if it be afterwards denied; *tamen quære.*

8 H. 6. 17.
8 Ass. 16.
Assise 191.

G A feme covert shall not be a disseisorefs of any land, if she do not actually enter; nor shall she be a disseisorefs by the husband's act. And an infant shall not be a disseisor by his commandment. But a man of full age may be a disseisor, if he command another to enter into land.

21 H. 7. 35.
or 350.
44 Ed. 3. 23.
contr.
7 Ed. 4. 7.
12 Ed. 4. 9.
41 Ed. 3. 24.
16 Ass. 7. 35

H (d) If a man recover a rent, the sheriff may put him in seisin by wood, or by any parcel of the land out of which the rent is issuing.

Ass. 5. 8
H. 6. 14.
2 Ass. 3.
12 Ass. 87.
5 Ed. 4. 15.
34 Ass. pl. 12.
13 H. 7. 16.
40 Ed. 3. 21.
49 Ed. 3. 15.

I And seisin of rent by a parson or a chauntry priest, which they have in the right of their church, shall as well of an abbot, be a seisin to their successors to have an assise of the

(a) Also appendant to the demesnes of his manor, 18 Ed. 3. *Admeasurement* 7. and accordingly adjudged, 18 Ed. 3. 42. 43. and see if the tenant shall have a *Quo Jure* there.

(b) For he has not common *ratione dominii*. Assise of common see the next writ *post*.

(c) See seisin of the rent by the hands of the tenant at will, pending the writ, abates it, as agreed, 27 Ed. 3. 83.

(d) But if one has such a return on an award in replevin, this is no seisin of the rent, for by the judgment in the avowry, he shall not recover any rent, but only a pledge; and therefore it is adjudged, that upon a judgment by the avowant for rent, no *Scire facias* lies for the arrears, for which the avowry was made, and no others.

rent, if they be denied the same after the death of their predecessors, *Quod vide* 34 *Ed.* 3. *Lib. Ass.*

A man shall not be adjudged a disseisor by the act of his K tenant at will; although the tenant at will make rescous for rent, &c. he shall be adjudged the sole disseisor and not the tenant of the freehold: but if the tenant of the land pay the rent unto a stranger who ought not to have the same, that payment is a disseisin to him who ought to have the rent (a).

(a) See 16 *Ass.* 15. But 24 *Ed.* 3. 40. and 40 *Ass.* 19. seem *contra*. *Vide* B. *supra*.

Assise, where to be taken at large.

In assise by an infant, if the deed of his ancestor be pleaded against him, the assise shall be taken at large, if the deed bear date in the same county; but if it bears date in a foreign county, the assise shall be adjourned into bank; and if it be taken at large, it is error; for the deed cannot be tried in another county. 21 *Ed.* 3. 20. 3 *H.* 4. 17, 18. See *contra* 26 *Ass.* 39. An assise was awarded at large on a divorce pleaded between the plaintiff's father and mother. 30 *Ass.* 45. An assise awarded at large on a divorce between the infant's ancestors pleaded. 37 *Ass.* 5. So an assise was awarded at large on pleading an execution against an infant upon a recognizance by his ancestor. 38 *Ass.* 5. But an assise shall not be awarded at large, where a fine or recovery is pleaded against an infant, without acknowledging the possession to be in him. 24 *Ed.* 3. 64. 7 *H.* 4. *per Skreen*. If a bar be pleaded against an infant plaintiff in an assise, the matter thereof shall be inquired, and also all those things which may avoid the infant's title; but when the defendant pleads to the assise, it is sufficient, if the verdict be given without

inquiring into the infant's title, 12 *H.* 4. 22. adjudged; yet see there *per Hankf.* If an infant pleads in bar, and title is made, the infant shall answer to the title, or else the assise shall be awarded.

Assise, where to be in Right of Damages, and where to inquire of the Points of the Writ.

In an assise the tenant pleads, that the plaintiff is a nun professed, &c. and she is certified by the bishop, no nun professed, here the assise shall be taken on the seisin and disseisin, and not in right of damages, for the plea is to the writ. 21 *Ed.* 3. 59. In *mortdauncestor* the tenant pleads a release, if it be found against the tenant, the points of his writ shall not be inquired, but only the damages; but if he pleads to the writ, or vouches, which is counterpleaded, there shall be an inquiry of the points of the writ *de mortdauncestor*, 39 *Ass.* 13. 17 *Ed.* 3. 28. accordant; but if a foreign release be pleaded and denied, and at the day in bank, the tenant makes default, the assise shall be awarded *at large*, 22 *Ed.* 3. 4. and *ibid.* 12. an assise awarded in right of damages on failure of the record, 24 *Ed.* 3. 61. an assise awarded on a foreign release pleaded, and default of the tenant at the day in bank. 30 *Ed.* 3. 12. If the tenant pleads a bar which does not confess the ouster, and the bar is ruled

ruled insufficient, there seisin and disseisin shall be inquired, and therefore he may plead (or confess) an ouster at the taking of the affise, *per Tanf.* 22 *Ed.* 4. 39. and *per Hull and Gascoign*, it is usual to inquire of the seisin and disseisin in such a case, but not to award (damages.) 8 *H.* 4. 22. * If in an affise of rent, the tenant pleads *hors de son fee*, and it be found against him, the seisin and disseisin shall not be inquired, 10 *Aff.* 24. and 10 *Aff.* 18. so if he pleads a release of the plaintiff, 8 *Aff.* 15. or other deed, &c. 11 *Aff.* 26. and so if he pleads a deed of the plaintiff's ancestor with warranty, and the plaintiff makes title, which is found against the tenant, 17 *Aff.* 18. and yet it seems clear, that if the tenant acknowledges the plaintiff's seisin, and he counterpleads it, which is found against him on an issue or demurrer, the affise shall be taken but in right of damages. 28 *Aff.* 21, 23. 40 *Aff.* 19. For he is a disseisor by the counterpleading, and he has confessed the seisin; yet it seems it shall be inquired *ex officio*, if he was a disseisor with force. See 13 *Ed.* 3. *Affise* 117. If baron and feme plead a record in an affise, and at the day they make default, now if the plaintiff will release damages, he shall have judgment, but if the baron makes default, and the feme is received, and pleads a record, &c. and after makes default, now the affise shall be taken on the seisin and disseisin, 10 *H.* 4. 14. 11 *H.* 4. 51. 37 *Aff.* 1. adjudged, that if the tenant pleads to the writ, and the plaintiff maintains his writ with such a plea as proves (alleges) a disseisin in the tenant, and the tenant demurs thereto, the affise shall be awarded in right of damages on the disseisin confessed. 1 *H.* 6. 5.

the plaint in an affise shall never abate for want of form, and therefore, tho' the course is in an affise of office or corrody, or common apprender, &c. to shew the disseisin, and then the title; yet if he shews the title first, and then the disseisin, it shall not abate. 9 *Ed.* 4. 6. but in those cases where he makes title in his plaint (as regularly he ought to do in an affise of office, corrody, &c. yet see *Raft. Entr.* 75. *hors de son fee* pleaded in part of an affise of rent, 15 *Ed.* 4. 24. or of land 40 *Ed.* 3. 38.) there he ought to make his plaint to pursue his title, as if a grant be made to have the surveying and packing of all clothes which should go beyond sea, he ought to shew, that those clothes of which he was ousted the surveying, were clothes to go beyond sea. 2. He who makes a plaint in an affise of office, need not be so precise in setting out his title, as if he was to sue against the king by petition; for one need not make so exact a title against pernors of profits as against a tenant, and therefore he need not shew who had the office before, or that it was an ancient office, 9 *Ed.* 4. 11. and yet if it was not an ancient office, it ought to be created and granted by the words *constituimus*, &c. 8 *Ed.* 4. 6. If one makes a plaint of an office, he need not shew that it is an office of profit, or that fees belong thereto, 8 *Ed.* 4. 22. and yet if it be only an office of charge, an affise does not lie thereof, 27 *H.* 8. 38. but if he be ousted by a pernor, he has his remedy by some original writ, according to his case, and so it is in case of a corrody. 17 *Ed.* 2. *Nuper obiit* 12. in the case of *Const.* 27 *H.* 8. 12. 4 *Ed.* 3. *Brief* 735, 793, 794.

Affise of Office, and Profit apprender.

Affise, how it is to be brought of an Office.

An affise was brought in *Middlesex* of the profits of the office of packing wools, &c. within the liberties of *London*, granted by the king, by *Norris v. Comibrock*; and it was agreed, 1. That

1. If he be ousted of the office, then the affise shall be brought of the office, *cum pertinentiis*; for if his plaint be of the office, and of the profits thereof, he makes his claim of one thing twice,

In 8 *H.* 4. 23. *Hull.* says "In ancient times when a man pleaded and in bar of an affise, whether he acknowledged an ouster or not, if the issue came against the tenant, the *Pl.* never asked seisin of the land, and this would be the better law to use yet - and although a man has used in such case to inquire of the seisin & disseisin this is not allowed in the reign of law, but is matter of courtesy. *Gas. ad idem, alio* "a man is used to make inquiry in such case in affise, yet this ought not to be done in affise." I should therefore think the words "but not to award damages" are a mistake of the translator. 9.3.

and therefore his plaint shall abate, 8 Ed. 4. 22. agreed; and so is 30 Aff. 4. for the office of meter. 2. If one be ousted of parcel of the profits of his office, this may be alledged to be an ouster of the whole office, if the party will. 5 Ed. 4. 8. *per cur.* But if he will, he may make his plaint only of the profits of his office, and if he be ousted of parcel of the profits, he may have an assise of those profits: so if one has a corrody *de pane & cervisia*, if he be ousted of only part of the bread, &c. he shall have an assise of the whole quantity of bread for the necessity, but he need not bring an assise of his corrody, 22 H. 6. 10. 3 Ed. 3. Aff. 175. 13 Ed. 3. *Plaint* 23. 11 Aff. 22. 30 Aff. 4 and so note a diversity between a thing severable and entire. If A. grants a rent of twenty pounds out of twenty acres, in twenty several counties, a denial of part of the rent is a disseisin of the whole, and the assise shall be brought *in confinio comitatus*. But if A. grants estovers in two several woods, and the grantee be disturbed in one wood, he shall not have an assise of that only. 22 H. 6. 10, 11. ¹¹/₃. If an office extends into divers towns, hundreds, or counties, it is an office for which an assise lies of the profits, by the stat. *West.* 2. where note; If an office extends into divers villis or counties, &c. an assise lies for the profits in any vill or hamlet, where the grantee is ousted, for the profits are things severable. If one be sheriff, or bailiff of an hundred, or manor for life, if he be ousted of the office, he may have a writ or plaint within the shire-falty or bailiwick of such county, city, hundred, or manor, without shewing

in which of the villis, because well known. But if it be for the bederly of an honour, &c. there he ought to bring his writ in all the villis, where the office extends. Also in the former case, the hundred, or county, (city) shall be put in view; see these books. 16 Ed. 2. Aff. 370. 18 Ed. 2. Aff. 377. 8 Ed. 3. 56.

If the king grants 6 d. on each sack of wool, within the county of York, the grantee shall have an assise of the profits in any particular place within the county, where he is disturbed. But if he brings an assise of the office, the whole county shall be put in view, as in the principal case *supra* was held, seeing the office there extended into divers counties. (For it was averred to be within the liberties of London, &c.) therefore the assise for the office should be brought *in confinio comitat'*, but for the profits, it may be brought in any vill or place where the disseisin is; but then how shall it be in case the office extends throughout England, and it seems to me most reasonable, that the office should be severable, because it does not charge the land, but only respects the person; and therefore he may also have an assise of his office in whatever place he is disseised; as suppose he disseised him of his office of measurer in such a town, &c. See there the case of the usher of the exchequer. 22 H. 6. 10, 11. *Et postea partes concordaver'*. See an assise of the office of *silacer*, and the post put in view, *Dyer* 114. *Vaux's* case; and if it be an office concerning land, it seems he ought to name the tenant of the soil. 8 Ed. 1. Aff. 285.

(V) But see the case. *Newton* says "suppose I have common or estovers in two several woods which are in divers villis by the same grant, & in the one wood I am seized of the estovers & in the other wood disseised, I shall have assise & bring my plaint of this wood, & in that vill only where I am disturbed in taking the profits."

Writ of Common of Pasture, Turbary or Piscary.

L THE writ of assise of (a) *novel disseisin*, of common of pasture, or of turbary, or of piscary, lieth where a man hath common of pasture appendant or appurtenant to his manor or house, or land which he hath for term of life, or in fee-simple, or in fee-tail; if he be disturbed of his common, so that he cannot take it as he ought to do, he shall have an assise of *novel disseisin*, thereof; and the writ shall be such:

(b) *The king to the sheriff, &c. A. hath complained unto us, that B. unjustly &c. hath disseised him of his common of pasture in N. which belongs to his freehold in the same town, or in another town, after the first passage of, &c. (as in an assise of land): And therefore we command you, that if the said A. shall make you secure, &c. then cause twelve free and lawful men of that neighbourhood to view that pasture and the tenement, and their names to be put in the writ, and summon, &c. before our justices, &c. or before us, &c. on Thursday next after the morrow of the octave, &c. or thus, before our justices at the first assise when they shall come into those parts; or thus, before our beloved and faithful R. and F. and those whom, &c. (as above.).*

11 H. 6. 22.
The writ was
de libero temento, and his plaint
of common of
pasture, for
which the writ
abated.

And if the common of pasture, or turbary or piscary be not appendant or appurtenant to any manor, land or tenement, then these words in the writ, *which belong to his franktenement*, shall be left out in the writ; and then the writ shall be such:

(a) See 2 H. 4 per Markham, if the tenant ploughs the land, wherein I have common, I shall have an assise, and not a writ on the case. See 4 Ed. 2. Aff. 449. that an assise of common does not lie without naming the tenant of the soil.

(b) Here note, that an assise *de libero temento* does not lie of common, for it is no tenement, and therefore by a grant of all lands and tenements, it is

held by some, that common in gross does not pass. And yet a writ of dower lies thereof, and he shall make his demand of common. 11 H. 6. 22. And note; in an assise of common it is not necessary to make title in the plaint, but the other may demand what he has of common there, 36 Aff. 3. the other pleads *hors de son fee*, &c. 11 H. 6. 27. See in an assise for common appendant, you need not prescribe. 22 H. 6. 10.

The

The king, &c. A. hath complained unto us, that B. unjustly, &c. hath disseised him of his common of pasture in N. after the first passage, &c. (until) of that neighbourhood to view that pasture, and their names to be put in the writ, &c. as in the writ of assise of land.

21 H. 6. 22.
per Paston.

And the patent made unto the justices of the assise of common is as the patent made to the justices of assise of land; but where it is said in the patent of assise of land in that place, *of his freehold, &c.* he shall say in this patent, *of his common of pasture in N. &c.*

[180]

(a) And if a man have common appendant or appurtenant to his freehold which is in his manor or land, which is in several counties, and he be disseised of his common, then he shall have an assise in the county where the common is, and another writ in the county where the land is, to which the common is appendant or appurtenant. And if the land or common be in one county, and the land to which the common is, be in another county, yet the writ shall be brought in the county where the land of which the common is issuing, is, and another writ in the county where the land to which the common is appendant, is. And if the land be in one county to which the common is appendant, and the common be in several counties, then he shall have several writs, in the county where the common is, and where the land is; and the forms of the writs are such :

A. hath complained unto us, that B. unjustly and without judgment hath disseised him of his common of pasture in N. which belongs to his freehold in R. and K. which are in the confines of your county and the county of Lincoln, after the first passage, &c. Or thus; of his common of pasture in N. in your county and the county of Lincoln, which belongs to his freehold in K. in the county of, &c. or thus; of his common of pasture in R. and K. which are in the confines of your county and the county of

(a) See a commission to inquire if *A.* has common in one county appendant to land in another county, and a bridge is between the land and the common, which ought to be repaired

by one, and the bridge is broken, so that *A.* cannot use his common, he shall have an assise where the bridge is, and not where the common is. 7 H. 4. 8.

Lin-

Lincoln, which belongs to his freehold in K. in the county of, &c. Lincoln in the same confines, &c.

And upon these writs he may have a patent directed to certain persons who shall do justice in that assise upon all the writs.

The king to his beloved, &c. Know ye, that we have constituted you our justices, together with those whom we have associated unto you, to take the assise of novel disseisin which A. hath arraigned before you by our writs against B. of common of pasture in R. and K. which are in the confines of the counties of N. and L. therefore we command you, that at a certain day and place in the confines of the county aforesaid, or in the confines aforesaid, which you shall appoint for this purpose to take that assise, &c. For we have commanded the sheriff of the county aforesaid, that at a certain day and place in the confines of the county aforesaid, or in the county aforesaid, whereof you shall give him notice, he cause that assise, &c.

And in like manner he may sue several writs of assise of common of turbary, or of piscary, or other like profits which are in two counties. And when a man hath a rent which is issuing out of land in two counties, if he be disseised thereof he shall have an assise as before is said of common, viz. two writs, one patent, as before is said, by the Stat. 7 R. 2. cap. 10. (b).

5 Ed. 4. 2.
Post. 187.
21 H. 6. 9. 10.
7 H. 4. 30.
5 Ed. 3. 2. ac.
10 Aff. 5.
Br. Assise 151.

B (c) And a man cannot use his common appendant with the cattle of strangers, unless he bring them to soil his land; but he cannot agist other cattle there for money, which do not manure his land.

45 Ed. 3. 12.
15 Ed. 4. 32.
Ryot.
6 H. 7. 14.
11 H. 6. 12.
15 Ed. 4. 32.
The same law

where a man hath common as an inhabitant, he shall have it but for those which are levant and couchant within that town.

And if a man grant common unto one for his own cattle, he cannot use his common with the cattle of a stranger.

A man presumed to have common appendant for all

manner of beasts, and it was holden it could not be common appendant, for that the same is not but for those cattle which manure his lands, 9 Ed. 4. 3. 37 H. 6. 34. and 14 H. 6. 6. But it is common appurtenant. Old N. B. 26.

(b) But it was otherwise at common law. 18 Ed. 3. 32.

H. 6. 6. and see the case of *Rumsey* and *Rawson*, Raym. 171. Mod. 18. 25.

(c) See these diversities agreed in *Strode's* case, 11 H. 6. 22. 14

And

And so if a man prescribe to have common for his own cattle, he cannot use common with other cattle.

24 H. 8. 2.
If a man hath
common sans
number

granted, yet the tenant shall have common for his cattle. 11 H. 6. 22.

But if a man (a) claim common for cattle without number, or to have common for twenty cattle, there he may agist the cattle of strangers for money in that common.

22 H. 6. 42.
27 H. 6. 34.
Admittitur.
But Prifot, it
cannot be but
to arable,
20 H. 6. 4.

Hulls acc. 5 Aff. 2. It cannot be but to ancient land of that, and not to land improved, 20 Ed. 2. acc. and there the land to which it may be appendant, is called aid and gain.

(b) And a man may claim common appendant *ratione mesuagii*, anno 23 H. 6. But it seemeth it shall be taken that he hath land lying to his house, &c. which the cattle ought to foil, &c. *Quere.* C

7 Ed. 4. 26.
32 H. 8.
Dyer 47.
37 H. 6. 34. ac.

(c) None shall claim common by vicinage but the lord D who hath the possession of the town, 23 H. 6. But yet it seemeth, that one neighbour may claim common by vicinage in the land of another neighbour, although he be not lord of the town, &c. And so if a man claim common in E certain lands so long as he dwelleth in such a town to such a house, or if he claim common in the land until the lands be sowed, and after the corn is cut, to have common there again.

30 H. 6. 73.
So if he be dis-
seised of the land,
he shall not have
common till his
entry. 5 H. 7. 7.
29 H. 8. 4.
7 Ed. 4. 27.

(d) And if a man be disseised of the common appendant F or appurtenant to his land, and afterwards make a feoffment of the land to which the common is appendant or appurtenant, he shall not have assise of that common or other remedy.

If

(a) See accordant 11 H. 6. 22. and therefore such common is grantable over. See 27 H. 8. 10. that it may be granted to two. 22 H. 6. 22. 36 Aff. 3.

(b) See 22 H. 6. 44. and 11 Ed. 3. common 11. one claims common as appendant to his manor, and issue joined thereupon, where it is said, that if one has common appendant to his carve of land, whereon he has a house, this shall not be said appendant to the house, but to the land: and *note* there a special prescription.

(c) *Note*; The lord may have in the land of his tenant common appendant to his own demesnes, *per Green.* 18 Ed. 3. *Admeasurement* 7.

(d) See 4 Ed. 3. 45. In a *quod permittat*, of the seisin of his grandfather. *Note*; If one grants common, and does not shew in what place it is to be taken, the grant is void, *per Paston*, if he grants common throughout his manor for his beasts, he shall not have it in his garden, nor in his land sown, nor for beasts not commonable;

per

- G If a man grant certain lands to one *cum communia in omnibus terris suis*, &c. and doth not express any place certain, he shall have common in all his lands which he had at the time of the grant.
- H And if a man have common of estovers by grant, he cannot build new houses to have common of estovers for those houses.
- I The user of common by tenants at will, shall be a seisin to him in the reversion to have an assise, if he or his tenant at will, be after disturbed to use the common. 14 H. 6. 6.
- K And *P. 45 Ed. 3.* it appeareth, that he who hath common granted unto him by specialty, cannot agist other men's (a) cattle in the common, but ought to use the common with his own cattle, or such cattle which he hath to occupy his land with, &c. or may manure his lands with cows which he alloweth to have the keeping for their manure: but *Thorpe* said, that if a man grant to me common for my cattle, I may in that case take other beasts to give me seisin in my common, and presently drive them off again, if he who granteth the common agree thereunto. 11 H. 6. 22.
11 H. 7. 7.
- L And in assise of common, all the tenants of the land out of which the common is, ought to be named, &c. as in assise of rent-charge. 32 Ass. 82.
Thorpe.
- M If a man have an assise of common, and pendent the writ, he use the common, the writ shall abate, but if the cattle escape into the land, it shall not abate the writ although they feed there. 7 Ass. Br.
Assise 121.
- N (b) And we are to know, that common appurtenant to a manor may be for cattle without number, or to a certain

per Babb. If one grants common in his land, *quandocunque averia sua ierint*, he shall not have common, but when the grantor's beasts are there also; but if one grants common to *I. S. ubicunque averia sua ierint*, he shall have common but in the places where the grantor's beasts do go; and therefore if he justifies for such common, he ought to shew that the beasts went there. 2. If the beasts of the grantor once went there, although he never had any

beasts there afterwards, yet the grantee shall have the common. 9 H. 6. 36. See 11 Ed. 3. *Common* 10. A. grants common to B. *in omnibus pasturis suis*, to go there with his own beasts; *quare*, if he has common, though the beasts of the grantor are not there; it seems not

(a) Or such beasts as he had; see accordant 11 H. 6. 11.

(b) Common appurtenant for all manner of beasts, 14 H. 6. 6. is not appurtenant,

26 H. 8. 4.

Plow. Com.
381. ac. 5. Aff. 9.2 H. 4. 6. 10 H.
7. 13. 16 H. 7.
9. 42 Ed. 3. 5.

tain number, and may be appurtenant to a manor by prescription or by grant made since time of memory, and that as well for cattle certain, as without number. As if at this day a man granteth to one common of estovers, or of turbary in fee-simple to burn in his manor, by that grant it is (c) appurtenant to the manor, and if he make a feoffment of the manor, the common shall pass to the feoffee. And so if he grant to a man and his heirs common, as appurtenant to his manor of *F.* to common in such a moor, &c. ; now by that grant the grantee shall have the common appurtenant to his manor, and if he make a feoffment in fee, or for life of the manor, the feoffee or lessee shall have the common. As if an abbot with the assent of his convent, grant to another and his heirs, to find a chaplain to sing in his chapel in his manor of *D.* if he make a feoffment of the manor, the feoffee shall have an action of covenant against the abbot and his successors by that grant, as it appeareth. *M.* 2 *H.* 4. Covenant, and *H.* 42 *Ed.* 3.

*Writ of Certificate upon Assise sued.*As a fine or recovery. 8 *Ed.* 3.
Br. Assise 426.
4 *H.* 4. 5.

THE writ of *certificate* lieth in divers manners ; one A
is where the defendant appeareth by bailiff (*a*), and pleads to the assise, where his master hath a release to plead, or other matter in writing, of which the jury cannot have notice ; then if the assise pass against the bailiff, the master shall have a writ of certificate upon that writing, and

pendant, but appurtenant, if it be for beasts not commonable. 25 *Aff.* 8.

(c) See 7 *Ed.* 3. 48. If one grants to *I. S.* eight acres of land, *simul cum* so much common as belongs to his oxgang of land in a certain place, this is not common appurtenant, but in gross ; *per Herle* ; but see there it is adjudged if one grants an assart *simul cum tota communia quant' pertinet ad unam bovatum terræ*, adjudged this is common in gross, and he shall take as much as another takes for two bovates

or oxgangs in gross, and when he pleases. *Ratio*, for such common cannot be appendant to land.

(a) *Note* ; After the assise awarded in this plea by the bail, the tenant may appear in person, and plead such a plea, as thereon he may have a certificate of the assise being taken, &c. 11 *Aff.* 3. 8 *Aff.* 17. 10 *Aff.* 24. 12 *Aff.* 37. 20 *Aff.* 1. And so he may after the assise awarded by default. 20 *H.* 6. 29. 9 *H.* 7. 24.

thereupon

thereupon he shall cause the assise to return, and be sworn to try the deed, &c. as shall be more fully shewed hereafter.

B (b) And there is another manner of certificate, when the verdict is not well examined by the justices when they take the verdict, or when they have not well examined, or fully inquired of the issue joined, &c.

Plow. 92. a.

C (c) And the certificate ought to be sued in the same county where the assise was sued, and may be sued either before the same justices before whom the assise passed, or before other justices. And if the king's bench or common pleas be in the same county where the assise passed, then the certificate may be sued in either of those courts.

21 Ed. 3. 3. Br.
Assise 63. Vi.
32 Ass. 1. one
shall have a certificate upon a
defeasance.

And the certificate shall be a writ directed to the sheriff, and the justices shall have a patent made to them as they shall have in assise, &c. And the form of the patent made to the justices shall be as follows.

12 H. 4. 10. 41
Ass. 5. Certificate was at the
common law before
judgment.
Vi. 8 Ed. 3.
Fitz. Assise 412.
Plow. Com. 92.

D *The king to his beloved and faithful A. B. and C. greeting: Because certain doubts are arisen upon some articles touching the assise of novel disseisin which was summoned between A. and B. and taken before you the aforesaid B. and our beloved and faithful I. at N. by our writ, as from the complaint of him the said A. we have received information, we have constituted, you our justices, together with those whom we have associated unto you, to take the certificate thereupon: and therefore we command you, that at a certain day and place which you shall appoint for this purpose, you take that certificate, doing thereupon that which to justice belongs, saving to us the amercements, &c. we have also commanded our sheriff, &c. that at a certain day and place which you shall give him notice of, he cause to come before you the jury of that assise, to certify you upon the articles aforesaid, &c. In witness whereof we have caused these our letters to be made patent. Witness, &c.*

(b) And it seems that so long as the assise depends in adjournment, this execution may be made either without writ, as 34 Ass. 1. or by writ, as 34 Ass. 5.

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(c) But if they remove it, then it shall not be taken there, but in the county by *nisi prius*. 7 H. 4. 45.

L

(a) And

Writ of Certificate upon Assise sued.

(a) And the form of the writ of certificate is as follows: E

The king to the sheriff, &c. Because certain doubts are arisen upon some articles touching the assise of novel disseisin which by our writs was summoned between A. and B. and taken before our beloved and faithful H. and R. at N. of tenements in I. as from the complaint of him the said A. we have received information, we have constituted the aforesaid H. and R. or thus, the aforesaid H. and our beloved L. or thus, our beloved and faithful N. and S. our justices, together with those whom we have associated unto them to take the certificate thereupon: and therefore we command you, that at a certain day and place whereof the aforesaid N. and S. shall give you notice (b) you cause to come before them the jury of that assise, to certify them upon the articles aforesaid, and summon, &c. the aforesaid B. that, &c. before, &c. to bear that certificate: and have there the names of the jury and this writ.

And this writ lieth properly where the verdict is not well examined. But if defendant appear by bailiff to the assise, and plead *nul tert*, &c. and it is found against him where his master hath a release to plead, and doth not plead it; then his master shall have another form of writ upon the statute of *West. 2. cap. 25.* and the writ shall be such: F

The king to his beloved and faithful I. and his companions justices, &c. Whereas in the statute set forth at Westminster it is contained, that if the defendant against whom the assise passed in his absence, shew any deeds or releases, upon the making whereof the jury were not examined, nor could be examined, because there was no mention made of them in pleading,

(a) See *Rot. pat. 1 Ed. 1. M. 3.* and *M. 34. in dextro.* *Si forte assisa illa super quibusdam articulis illam contingentibus minus plene examinata fuerit eos eam plenius examinetis.*

(b) This was the writ which lay at common law, and was always brought before judgment, and was always a perfecting of the verdict, so that it shall be said one and the same verdict; and therefore, if any of the jurors

therein had died after the verdict, the certificate thereon could not be taken by the residue with others; for the assise was always pending, and therefore in that case the examination fails; but it is otherwise it seems in a certificate on the statute. See *12 H. 7. 9.* and *43 Aff. 5.* a certificate after verdict and before judgment, on a deed not given in evidence before, where the defendant and infant pleads in person. and

and probably might be ignorant of the making of those writings, the justices upon the sight of those writings shall cause the party who recovered to be warned, that he appear at a certain day, and shall cause the jurors of the same assise to come, and if he shall verify those writings to be true by the verdict of the jurors, or by enrollment, he that purchased the assise contrary to his own deed, shall be punished by a certain penalty contained in the said statute: and we have received information from the complaint of E. that I. lately arraigned a certain assise of novel disseisin by our writ against the aforesaid E. and others, &c. of tenements in S. which assise hath passed in the absence of him the said E. and others, as it is said, and he the said E. hath a certain writing of release of the aforesaid I. of the tenements aforesaid, upon the making whereof the jurors were not examined, nor could be examined, because there was no mention made thereof in pleading: we command you, that having seen the said writing you cause to be done to him the said E. due, speedy and complete justice in the premisses, according to the form of the statute aforesaid. *Witness, &c.*

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And this writ is as a patent made to these justices, and upon that they award a certificate to the sheriff, to warn the party to cause the jurors in assise to come before them. And that patent or commission is commonly made to other justices, as well as unto the justice before whom the assise passed, and the same appeareth by the words of the patent or commission.

A (a) But by the statute of *West. 2. cap. 25.* it appeareth, that if the bailiff of the defendant allege a record in bar of the assise, the justices may take the assise notwithstanding that plea of the bailiff, and give judgment upon the verdict, &c. But then the defendant in the assise may come to the justices, and shew that he hath matter of record to bar the plaintiff in the assise, &c.; That at another time he barred the plaintiff in the like assise,

(a) See 12 H. 4. 9. After judgment given for the plaintiff in assise upon the death of the justices, a *certiorari* issued out of chancery to the executors of the justices, to send the record into chancery, and from thence a *mittimus* is sent to the justices of assise in the county, with a writ reciting the statute.

Writ of Certificate upon Assise sued.

brought by him against the defendant; or that there is a writ of higher nature depending between them for those lands: and then he ought to sue forth a writ to cause the record to be brought before the justices before whom the assise passed: and thereupon, when the record cometh before them, if they perceive that the record will be a bar in the assise, then the said justices shall award a special writ of *seire facias* out of the record of the assise, to warn the party to be before them, &c. and if he cannot deny it, nor avoid it, then the defendant shall recover his seisin again, and double damages, and the plaintiff in the assise shall be imprisoned at the discretion of the justices. And if the defendant in the assise have not any record to shew, (b) but a release, or other matter in writing, which might bar the plaintiff who recovered in the assise; then if the defendant shew those writings to the justices before whom the assise was taken, the justices thereupon may award a special writ of certificate directed to the sheriff, that he summon the party, and that he cause the (c) jurors in the first assise, &c. to try that matter, &c. and if it be found for the defendant, then the plaintiff who recovered by the assise, &c. shall lose double damages, and shall be also imprisoned at the discretion of the justices, as appeareth by the said statute.

But whether the defendant shall sue a special patent to the same justices to proceed as the writ aforesaid is, or whether they shall proceed and award a special certificate upon the matter in writing shewed them by the defendant, hath been a question; because by the judgment in the assise, and execution awarded, their authority by commission is determined, as some say. But I conceive, that

(b) *Quere*, if he shew a release bearing date in a foreign county, to what purpose or intent shall the assise return (it.) 12 H. 4. 9.

(c) It seems *per cur'*, that the party shall not have his challenge to those jurors in the certificate; *quere*, if it be a matter happening *ex post facto*, as attain of the jurors, &c. yet it seems,

if others are joined with the jury, as where any of them die, &c. he shall have his challenge, *per Hull*, although the jury came the first day in the certificate; yet if they make default, the parties shall plead notwithstanding. And *Note*; If the deed may be proved by record, then the inquest is not to the purpose. See 12 H. 4. 9.

the

the statute is a commission and patent sufficient to give authority to them to award a special certificate to warn the party, and to cause the jurors of the assise to appear before them upon the matter in writing shewed unto them although judgment be given in the assise, and execution be past; for if there be such matter, then their authority remaineth to punish the plaintiff for his suit, and to restore the defendant again unto his possession, by virtue of the statute, as I conceive.

- C And if a man lose in an assise by default, where he pleadeth by bailiff, where he hath matter in writing not shewed to the jurors, he may sue a certificate upon that matter before the justices at the next assise following, or before the justices of assise, or before the justices of the king's bench, or before the justices of the common pleas; and the form of the writ is such:

The king to the sheriff, &c. Because, &c. (as above until) we command you that you cause the jurors of that assise to come before our justices at the first assise, when they shall come into those parts, to certify them upon the articles aforesaid, and summon, &c. the aforesaid B. that he be at the said assise before the justices aforesaid to hear that certificate.

And if the certificate be sued before the justices of the common pleas, then the writ is such:

The king to the sheriff, &c. Because, &c. as we have received information; we command you, that you cause the jurors of that assise to come before our justices at Westminster (such a day) to certify them, &c. (as above).

And if the certificate be sued before the king, then the writ is as above:

We command you, that you cause the jurors of that assise to come, &c. before us at E. on Saturday, &c. to certify us &c.

- D If a man in assise brought against him plead a release, or other matter in writing, in bar of the assise, and the plaintiff deny the same, by reason whereof the same remain in the keeping of the chief justice of the assise; and afterwards a new commission be made to the chief justice and to other persons, to take all assises which remain to be

taken in that county, for which cause they award a re-attachment against the defendant, and a re-summons against the jurors; the defendant may come and plead the release or writing which is in the keeping of the chief justice, which was denied, &c.; and thereupon the chief justice shall give day until the next assises to bring in the writing; and if before the next assises the king's bench be removed to that county, and that record of the assises be come into the same court, and the defendant be re-attached, and appear not, but make default, for which the assise passeth for the plaintiff, &c. and that release not pleaded nor shewed, the defendant shall have a special writ to the said justice in whose custody the release or writing is, to send the same into the king's bench, and thereupon the defendant shall have his certificate out of the king's bench against the plaintiff upon that matter; and such writ is in the Register.

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If a man sue a certificate, he may have a writ of association upon that writ, as in assise of *novel disseisin*, and also a writ of *si non omnes*, as well as he shall have in assise of *novel disseisin*. A

And a man may sue the certificate before the same justices (a) before whom the assise passed, and then the certificate shall issue out of the Rolls of the same justices: but he may sue his certificate before other justices, if he will, and then the writ and patent made to the justices shall issue out of the chancery. B

(a) See 7 H. 4. 45. Assise taken in *banco*, which is removed, a certificate shall issue upon the Rolls there, and shall be taken by *nisi prius* in the county, 2 H. 5. 5. a certificate is not grantable on the Rolls; but by the same justices before whom the assise passed: but by an original writ, as 21 Ed. 3. 3. an assise taken in the country and adjourned into bank for difficulty, and the judgment given there: no certificate shall issue upon the Rolls in bank, but the record shall be remanded to the justices assigned and they shall issue the certificate upon the Rolls before them. See 33 H. 6. 20. where

after a record of a recovery in an assise was sent into bank by *Mittimus*, a certificate was there granted upon the Rolls there: but *Note*; it seems this certificate was upon the record, as it was 21 Ed. 3. 3. on a fine, and 2 H. 5. 5. on a judgment, &c. had before the same justices; for the statute is, *quod veniat coram justiciariis qui assisam illam ceperint*; but on a release, as the case is. 33 H. 6. 20. there the clause is *justiciarii*, &c. See *Rot. Parl.* 9 Ed. 2 M. 7. *dorso*, after the death of the justices of assise, a certificate before other justices assigned by patent.

And

C And if some of the jurors be dead, yet it seemeth reasonable that he have the certificate; and that it be tried by those who are alive, and by others, &c. for that is a new matter upon which they were not charged before; but see that matter debated. 7 H. 4. 45. Hil. 12 H. 4. 4. 32 Ed. 3. L. Aff.

D Anno 43 Ed. 3. It appeareth that a man shall have a certificate before judgment given in the assise, as well as after judgment given; and this is at common law. 43 Aff. 5.

E And a man shall have a certificate upon an assise of darrein presentment, or an assise of mortdauncestor, or juris utrum; and it is reason that a man have a certificate upon an attain, if it pass against him by default, where he hath matter to bar the attain, by release or other writing, &c. 12 H. 4. 9. West. 2. c. 5.

F And if the record of assise be removed into the common pleas, the party may sue a certificate in the common pleas before the justices there, although the assise be taken of lands in another county. See title Process, H. 33 H. 6. 7 H. 4. 45. ac. 33 H. 6. 20. 21. Nota cape pro fine was awarded pendent the certificate of assise.

G (b) And the process in a certificate is summons against the jury, and the venire facias against the party, &c. and afterwards a distress.

H (c) And nisi prius shall be granted in a certificate, if the land be in another county than where the certificate is brought.

Writ of Assise of Nuisance.

I ASSISE of nuisance lieth where a man levieth a nuisance to my freehold, which I have for life, in tail, or in fee-simple; then I shall have the writ to redress the nuisance (a). 14 Ed. 3. 36. & 5 Ed. 2. 43. Fitz. Nuisance 12.

And

(b) And the jurors shall have the view here. See 3 H. 4. 14.

(c) See the statute Mag. Char. c. 12. and 7 H. 4. 45. If an assise be arraigned in B. R. at York, and the bank (court) is after removed to Westminster, he shall have a certificate upon the Rolls, and nisi prius.

(a) Where he may abate the nuisance. See 8 Ed. 4. 5. But by Hankf. he shall not have trespass after the abatement; but if he brings an assise, and the defendant abates it pending the writ, the writ shall abate.* 2 H. 4. 11. See 6 Ed. 2. Aff. 454. Parishioners may abate a nuisance levied in

L 4

*There if the word "not" should not be reinserted. In the case 2 H. 4. 11. Thorne says expressly, that if the off had redress awarded the nuisance pending the writ, yet the writ is good, & the off shall receive damages such as the law will give.

Action sur le
case 36.

4 Ass. 3. If nuisance be, and after he to whom the nuisance is, alien the land, the feoffee shall not have assise, because it was before his interest, but the tenant shall answer to the nuisance, as well before his time as after. 19 Ass. 9.

And if the nuisance be done in one county, and the land to which the nuisance is done be in another county, then he ought to sue several writs of assise of nuisance, to each sheriff a writ, and a patent made to certain persons to be justices in that assise, as it shall be in assise of common of pasture, or turbary, or rent, or the like; and the form of the writ is such :

K

The king to the sheriff, &c. A. hath complained unto us, that B. unjustly and without judgment hath raised a certain pool in C. in your county, to the nuisance of his freehold in L. in the county of H. after the first passage, &c. and therefore we command you, that if the aforesaid A. shall make you secure to prosecute his claim, then cause twelve free and lawful men of that neighbourhood to view that pool, and their names to be put in the writ, &c.

And in the other writ, which shall be directed unto the sheriff where the land is, to which the nuisance is, he shall say in the writ *videre tenementum illud*. So that the jurors where the land is, shall see the land, and the jurors in the other county shall see the pool where the nuisance is done.

L

And moreover he shall say in the writ, *And their names to be put in the writ, and summon them by good summoners, that they be before our beloved and faithful R. and F. and those whom we have associated unto them, at a certain day and place in the confines of the county aforesaid, &c. ready, &c. and the form of the patent is such :*

The king to his beloved, &c. Know ye, that we have constituted you our justices to take the assise which B. hath arraigned before you by our writs against N. touching a certain pool raised in C. in the county of S. to the nuisance of his freehold in L. in the county of H. and therefore, &c. that at a certain day, &c. in the confines of the counties aforesaid which you shall appoint for this purpose, you take that assise, doing thereon what to justice belongs; for we have commanded our sheriffs in the counties

M

in the church-yard, though it has remained there twenty years. So if the plaintiff himself abates it pending the writ, the writ shall abate. 46 Ass. 9. aforesaid,

aforesaid, that at a certain day and place in the confines of the said counties, whereof you shall give them notice, they cause the assise to come before you; in witness whereof we have caused these our letters to be made patent. Witness, &c.

N And a man shall have the like writ, if a man have a way to (a) his land or house, and another stop the way, he shall have an assise of nuisance for that stopping; and if the way be in one county, and the land to which the way is, in another county, then he shall have two writs of assise of nuisance, to each county one, and a patent made to certain persons, as is aforesaid; and the form of the writ is such:

The king, &c. A. hath complained unto us, that B. unjustly and without judgment hath straightened a certain way in B. in your county, to the nuisance of his freehold in C. in the county of S. after the first, &c. and in the mean time cause twelve, &c. to view the way, and their names, &c. and summon, &c.

And unto the sheriff where the land is to which the way belongeth, the writ is, *Wherefore he hath straightened a certain way in B. in the county of C. to the nuisance of his freehold in S. in your county, after the first, &c. and therefore we command you, &c. to view the tenement, and their names to be*

21 Ed. 3. 22.
20 Ed. 3. 18.
16 Ed. 3. Fite.
Nuisance 3. Vi.
11 H. 4. 25. It
shall be brought
in confinio co-
mitatus. 14 H. 8.
31. con. 33 H.
6. 27. con. 2 H.
4. 11. con. 48
Ed. 3. 13.

(a) So that it ought to be a way appendant; for of a way in gross he shall have only a writ on his case, 11 H. 4. 26. *per cur.* and so of a way to a church, because he has no freehold in the church, 4 Ed. 3. Nuisance 8. but *contra* it seems as to a way to a church which one has *ratione tenuræ*. *Quære*, if not an action on the case, or a writ of assise at his election.

If a way be so stopped, that the party can pass but narrowly, an action on the case lies; but if it be wholly stopped, on an assise. 14 H. 4. 31. See *Lib. Entr.* 616. where a tertenant plows my way, I may have an assise, but not case, not even where it is wholly stopped. 2 H. 4. 10. 33 H. 6. 26. If the tenant stops my way assise lies; if a stranger does it, an action on the case only; and it seems that in an as-

sisse, or on a *quod permittat*, you need only name the tenant of the freehold where the stoppage is. See 1 H. 4. 83. if I have common appendant lying beyond a bridge which a prior ought to repair *ratione tenuræ*, and the bridge falls for want of reparation, I shall not have an assise of nuisance, *quare pontem prostravit*. 1. because there is no such writ. 2. Because here is only a neglect, and for that an action on the case lies. So if A. ought to scour a ditch, which he does not scour, whereby my land is drowned, an action on the case only lies; but if he stops it up, an assise of nuisance lies, *per Thirning*. If a stranger stops my way, an action on the case lies; but if the tertenant does it, an assise. 22 H. 6. 15.

put

Writ of Assise of Nuisance.

put in the writ, and summon, &c. at a certain day, &c. in the confines of the counties aforesaid, which the same, &c. And the patent is such :

The king to his beloved, &c. Know ye, &c. to take the assise which, &c. by our writs, &c. touching the straightening a certain way in B. in the county of Bedford, to the nuisance, &c. in C. in the county of Huntingdon ; and therefore, &c. (as above).

11 H. 4. 25.

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And a man shall have a writ of assise, *Wherefore he hath* 0 *unjustly and without judgment levied or thrown down a certain ditch in N. to the nuisance of his freehold in N. or hath levied or thrown down, or heightened, or lowered a certain pool, &c. or hath obstructed, or straightened a certain way in N. to the nuisance, &c. or hath thrown down a certain hedge in N. to the nuisance, &c. or hath diverted a water-course in N. to the nuisance of his freehold in B. after the first passage, &c. (as in an assise of common of pasture, until) of that neighbourhood to view that ditch, that pool, that hedge, that way, that water-course, and tenement, and their names to be put in the writ, and summon, &c. (as above in common of pasture) and the form of the patent is,*

48 Ed. 3. 17.

The king to his beloved, &c. To take the assise which A. &c. against B. of a certain ditch levied or thrown down in N. or of a certain pool heightened or lowered in N. or of a certain pool levied (b) or thrown down in N. or of a certain hedge levied or thrown down in N. or of a certain way straightened or obstructed in N. or of a certain water-course diverted in N. and therefore we command you, &c. (as above).

And for what an assise of nuisance lieth, appeareth by these verses :

fatum, num, s, a,
Fas flog sepe vi diversi cursus aquarum,
Poscunt assisam, mercatum, feria, bancum.
i. terminari coram justic' assisar' i. placitari in banco.

(b) Note ; An assise *de libero tenemento* does not lie of a way. 34 *Aff.* 13. *Vide supra.*

Note ; If one makes a ditch, &c. crosses a river which runs to my mill

although the ditch be made on his own soil ; it is in my election to have an assise of *novel disseisin* or of nuisance. 32 *Aff.* 2.

A And it appeareth by these verses, that for setting up a fair or a market unto the nuisance of (a) another fair or market, he unto whose nuisance that fair or market is set up, shall have a writ returnable into the king's bench; and the writ shall be in such form:

22 H. 6. 14.
11 H. 4. 7.

The king to the sheriff, &c. If A. shall make you secure, &c. then summon &c. P. that he be before our justices at Westminster, &c. to shew wherefore he hath set up a certain market, or a certain fair in I. to the nuisance of the free market, or the free fair of him the said A. in the same town, or in another town, after the first passage, &c. as he saith: and have there the summoners and this writ, &c.

There is also another form of writ for the same, which is a *quod permittat*, which is such:

The king, &c. Command P. that justly, &c. he permit the bishop of Lincoln to put down a certain market in Uppingham, which P. of M. father of the aforesaid P. whose heir he is, unjustly, &c. set up, to (b) the nuisance of the free market of C. late-

(a) *Note*; case does not lie, nor an assise of nuisance where it is *damnum sine injuria*, as for erecting a mill near my mill, whereby I lose the custom, &c. of the inhabitants. 22 H. 6. 14. so for setting up a grammar school. 11 H. 4. 47. but case lies for setting up a ferry, near an ancient ferry on the same river. 22 H. 6. 14. See for this *Bract.* 235. *mercatum levatum non est injuriosum nec prosterendum si sit antiquius meo mercato.* 2. If it be erected within the third part of twenty miles; *viz. unius diætæ.* 3. If set up for two or three days at most, *meum mercatum fuit vicinum.*

(b) See *Paseb.* 13 Ed. 3. *W. de Clynton* and C. his wife, brought nuisance against A. for levying a market in W. to the nuisance of their free market in S. for that the said W. and C. in right of the said C. had their market every *Wednesday* in S. to which market the country people near used to come,

&c. of whom the plaintiffs had toll, &c. the defendant levied a market at W. to hold the same day only two miles from S. and that the country people who used to come to S. do go to W. Pole defended the tort, &c. and demanded the view, but it was not allowed; he also took exception, for that they did not say their market was elder; but not allowed; for it shall come by way of plea. 3. Exception, for that C. had it only for life, and so ought to have another count; *non allocat*, wherefore he pleaded, that he had not levied any market to the nuisance of their market, and issue was taken, and the averment received by award. *Note*; If the market be on the same day, it shall be intended a nuisance; but if it be on another day it shall not be so intended; and therefore it shall be put in issue, whether it be a nuisance or not. 11 H. 4. 5. in a *scire facias* for the king to repeal a pa-

Writ of Assise of Nuisance.

C. lately bishop of Lincoln, predecessor of the aforesaid bishop, in Luddington, as it is said, and unless he will do it, and the aforesaid bishop shall make you secure, &c. then summon, &c. the aforesaid P. that he be, &c. to shew wherefore, &c.

And this writ was granted by the chief justice and clerks of the chancery, by which it seemeth, that a man may prevent another from having or keeping any fair or market unto the nuisance of his fair or market.

Writs of Nuisance which are Vicontiel.

By the statute of 6 R. 2. the plaintiff may choose to have it before the justices, or the sheriff. Register 199.

WRITS of nuisance which are vicontiel, (a) are those which do appear by the verses following:

*rica ca gultum ges lendinum
Fab fur porta, domus, vir gur mo murus, ovile
Et pons, tradantur hæc vicecomitibus.*

And the form of the writ is such: The king to the sheriff, &c. A. of B. hath complained unto us, that B. (b) hath unjustly levied or thrown down a certain house, or obstructed a certain gulf in N. to the nuisance, &c. in the same town, or in another, after the first passage, &c. into Gascoigne; and therefore we command you, that you hear that plaint, and afterwards cause justice to be done thereupon, that we may hear no more clamour thereupon for want of justice.

After the same maner are writs, Of a sheepfold, a gate, a young quickset hedge, a mill, an house of office, and the like, levied or thrown down. And those writs may be removed at the

a patent. Note; A market was granted to be in D. on Saturdays, two miles distant from C. where the king had a market on Tuesdays. Note; The patent commonly is *ita quod non sit ad nocument*; but if it be a nuisance, though it has not that clause, the second patent is void against him to whom it is a nuisance. 22 H. 6. 14.

(a) See an assise of nuisance, or an action on the case, lies for diverting

majoris partis cursus aquæ, &c. Dyer 284. and yet one shall not have an action on the case for stopping of a way; (*quære*) but he may have an assise of nuisance. Dyer 250.

(b) For levying of a goss to intercept the course of fish coming from the sea *usque ad gurgitem meam superiorem*. 46 Ass. 9.

fait

suit of the plaintiff or defendant, out of the county into the common pleas by a *pone*, with cause shewed in the writ, as in a replevin of his cattle; and the *pone* is such:

The king, &c. Put at the petition of the plaintiff the plaint which is in your county by our writ between A. and B. of a certain house levied or thrown down in C. by him the said B. unjustly levied or wholly thrown down, as it is said, and summon, &c. (as in a pone of beasts, &c.)

And the rule in the Register is, that if he who erecteth or throweth down a house, wall, or the like, dieth, that he to whose nuisance it is, or his heir, shall have a *quod permittat* against the heir of him who did the nuisance, which writs are amongst the writs of *quod permittat*.

Register 199.

D And a man shall have an assise of nuisance for building a house higher than his house, and so near his, that the rain which falleth upon that house, falleth upon the plaintiff's house.

18 Ed. 3. 22.
Nuisance 1.

E (c) And a man shall not have an assise of nuisance of a way, if it be not appendant or appurtenant to his freehold; but if a man build a house over the way which I have to my house, or to the church, I shall have an assise of nuisance.

4 Ed. 3. Fitz.
Nuisance 1.
46 Ed. 3. 23.

F And in a writ of nuisance, the defendant shall have the view, and shall be essoined; and if afterwards he makes default, a distress shall be awarded against him to answer, &c. and not save his default. P. 42 Ed. 3. 9.

50 Ed. 3. 12.

G And if a man levy a nuisance unto the house of another who hath therein an estate, but for term of years, then he shall not have an assise of nuisance, but an action upon the case against him, because he hath no freehold: but yet it seemeth he may enter and abate the nuisance.

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A And if a writ of nuisance be removed out of the county, and the sheriff return, that the defendant be not any

But his lessee
shall have, 13 H.
3. Fitz. Ass. 437.

(c) But he shall have a writ on the case for such way in gross. 11 H. 4. 26. but by the better opinion, the writ shall not be *Quare levavit quandam domum ad nocumentum liberi tenementi*. But *quare obstruxit vel arctavit viam ad nocumentum, &c.* Et *quod juratores*

videant viam vel tenementum. So if a man builds a house cross a watercourse to a mill, the writ shall be *quod divertit cursum aquæ ad nocumentum, &c. quare* if the writ may not be *quod domum levavit ad nocumentum liberi tenementi*. 11 H. 4. 25.

thing,

Writs of Nuisance which are Vicontiel.

thing, &c. the party shall have attachment, distress, and no other process, &c. because it toucheth freehold. But in an assise of nuisance the process is as in assise of *novel disseisin*.

And the parishioners may pull down a wall which is set up to their nuisance in their way to the church, *quod vide T. 6 Ed. 2.*

And in assise of nuisance a man may in his plea shew the nuisance to be to divers freeholds.

And if the ways be straightened, or the alleys or lanes in any town, city or borough corporate be filled with filth or dung, or such things by which means infection may increase, then he who will sue may procure such writ to have them cleansed, and made clean; and the writ is such:

The king to the mayor and his bailiffs of Oxford, greeting: Because we have received information from testimony deserving credit, that by dung and dunghills, and also swine-cots and frequent access of swine, and other filthinesses which are in the ways and lanes of the said city and the suburbs thereof, the air there is so much corrupted and infected, that a dreadful terror strikes the masters and scholars dwelling in the same, and others conversant and passing there, the benefit of wholesome air is hindered, the condition of men grievously hurt, and other intolerable disadvantages, and many dangers from such corruption are known to proceed, to the nuisance of the masters and scholars aforesaid, and of others there conversant and passing, and to the manifest danger of their lives: we being unwilling any longer to endure such great and intolerable defaults, command you, that without any delay you cause all the streets and lanes in the city aforesaid, and its suburbs, to be cleansed and for the future kept clean from dung and dunghills, and the other filthinesses aforesaid, lest by the corruptions or filthinesses aforesaid damage or danger for the future happen to any persons by your default, for which we ought grievously to attach you, as contemners of our mandate. Witnesses, &c.

And upon that he shall have an alias, a pluries, and attachment, if they do not cleanse them, &c. But for villages in the country which are not corporate, such writ lieth not.

*Writ de Association in Assise, and of Writs de
Si non omnes.*

E A writ of association is a patent made to one or more, when an assise of *novel disseisin* or certificate upon assise of *novel disseisin* is sued, then the king of his own motion, or the plaintiff, may sue to have other persons associated unto the justices of assise to take the assise; and the form of the writ or patent is such:

16 Ass. 6. Assise 206. note, there is one *si non omnes* general, which is entered of record, and remains with the

justices for their warrant to take other assises; and the special *si non omnes* is annexed to the record, and sent as parcel.

The king to his beloved and faithful C. and D. or, to his beloved and faithful F. greeting: Know ye, that we have associated you or either of you, or you to our beloved and faithful A. B. and G. to take the assise of novel disseisin which F. hath arraigned before the aforesaid A. B. and G. by our writ against H. of tenements in N. nevertheless, so that if at a certain day and place which they the said A. B. G. shall appoint for this purpose, you or either of you shall happen to be present, they shall admit you or either of you, or you their companions or companion for this purpose, otherwise they the said A. B. and G. (your presence or the presence of either of you not being expected) may proceed to the taking that assise: and therefore we command you, that you or either of you, or you attend the taking that assise, together with the aforesaid A. B. and G. in form aforesaid, doing thereupon that which to justice belongs, according to the law and custom of our realm; saving to us the amercements from thence coming, for we have commanded them the said A. B. and G. that they admit you or either of you, or you their companions or companion for this purpose, as aforesaid: In witness whereof we have caused these our letters, &c.

(a) And upon that patent of association the king shall send his writ unto the justices of assise, commanding them thereby to admit him or them, &c. and the writ is such:

See for the exposition of (alter) Dyer 310, 338. L. 5 Ed. 4. 11. Br. Assise 386.

(a) Note; the justices may refuse to admit the associate, except the writ be directed to them. 5 Ed. 4. Ass. 459.

The

Writ of Association in Assise, &c.

The king to his beloved and faithful A. B. and G. greeting : Know ye, that we have associated unto you our beloved and faithful G. and D. or either of them ; or thus, our beloved and faithful F. to take the assise of novel disseisin which E. hath arraigned before you by our writ against H. and others contained in our original writ, of tenements in N. or of common of pasture in N. nevertheless, so that if at a certain day and place which you shall appoint for this purpose, them the said C. and D. or either of them ; or thus, him the said F. you admit your companions or companion for this purpose, otherwise you (the presence of them the said C. and D. or either of them not being expected ; (b) or thus, of him the said F.) may proceed to the taking of that assise : and therefore we command you, that you admit them the said C. and D. or either of them ; or thus, him the said F. your companions or companion for this purpose in form aforesaid ; for we have commanded them the said C. and D. that they or either of them ; or thus, him the said F. that they, or he shall attend, together with you, as is aforesaid. Witness, &c.

And if several assises or certificates of assises be sued before several justices in one county for lands, tenements, rents or commons, and afterwards the king make new justices to take all assises or certificates and juries which are to be taken in the same county, the king may make an association to the justices new assigned thus :

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The king to his beloved and faithful W. of D. R. of A. and R. of P. greeting : Know ye, that whereas we have constituted you our justices to take all assises, juries and certificates arraigned before any of our justices whomsoever by our writs in the county of Lincoln ; and afterwards have commanded you, that if you all could not be present conveniently at the taking of the assises, juries and certificates aforesaid, then two of you who should happen to be present should proceed to the taking of the same assises, juries and certificates, according to the law and custom of our realm ; we have associated unto you our beloved and faithful A. to take the assises, juries and certificates aforesaid

(b) Vel sic ; *Aliquis singulis vicib' quibus C. & D. abesse contigerit, &c.*

together

together with you; nevertheless, so that if at certain days and places which you or two of you shall appoint for this purpose, it happens that he the said A. be present, then that you or two of you admit him your companion, or otherwise you or two of you (the presence of him the said A. not being expected) may proceed to the taking of the assises, juries and certificates aforesaid: and therefore we command you, &c.

And a patent made to him who shall be associate, reciting the patent made to the justices, and the writ of *si non omnes*, shall say, *associavimus vos*, &c. and the form of the writ is such:

The king to his beloved and faithful A. greeting: Know ye, that whereas we have constituted our beloved and faithful W. of D. R. of A. and R. of P. our justices to take all assises, juries and certificates arraigned before any of our justices whomsoever by our writs in the county of Lincoln; and afterwards commanded them the said W. of D. R. and R. that if they all could not be present conveniently at the taking of the assises, juries and certificates aforesaid, then two of them who should happen to be then present should proceed to the taking of the same assises, juries and certificates, according to the law and custom of our realm, we have associated you to the aforesaid W. R. and R. and two of them, to take the assises, juries and certificates aforesaid in the county aforesaid; nevertheless, so that if at certain days and places which they the said W. R. and R. or two of them shall appoint for this purpose, it shall happen that you be present then they or two of them shall admit you their companion for this purpose, or otherwise they the said W. R. and R. or two of them (your presence not being expected) may proceed to the taking of the same assises, juries and certificates aforesaid: and therefore we command you, that you attend the taking of the assises, juries and certificates aforesaid, together with the said W. R. and R. or two of them in form aforesaid, to do, &c. saving, &c. We have also commanded them the said W. R. and R. that they or two of them admit you their companion for this purpose, as is aforesaid: in witness whereof we have caused these our letters to be made patent. Witness, &c.

A And afterwards when the king hath made his justices of assise by letters patent; and by other letters patent hath
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L. 5 Ed. 4. 111.
Br. Ass. 386.

associated unto them another person, yet he is used afterwards to make other letters patent, as well to the justices of assise, as to those whom he hath associated unto them, that if they all do not come at one time, to take those assises, juries, and certificates, that then those who come shall take the same assises, juries and certificates: and that patent is called a *si non omnes*; and the form of the patent is such:

The king to his beloved and faithful W. of D. R. of A. and R. of P. and A. of B. greeting: Whereas we have constituted you the aforesaid W. R. and R. our justices to take all assises, &c. arraigned, &c. (as above, until) and afterwards we commanded you, that if you all, &c. should proceed subsequently, we have associated to you, and to two of you, the aforesaid A. to take the assises, juries and certificates aforesaid, in the county aforesaid, we command you that if you all cannot conveniently be present at the taking of the assises, juries and certificates aforesaid then three or two of you (of whom we will one of you the aforesaid W. R. and R. to be one) shall proceed to the taking of the same assises, &c. according to the law and custom of our realm, &c. Witness, &c.

And these three patents next before are commonly made when any assise is sued, that is, one to the justices of assises, and another patent to the clerk of the assises of association and the patent of *si non omnes* made to the justices and the clerk of the assises together.

(a) And if the king make his justices of assise in any county, and afterwards make an association to them, and a patent of *si non omnes*, &c. and afterwards divers assises or certificates of assise remain before them not determined: the king at the next assises may make a new commission unto other justices to take all those assises and certificates, and may make a new association unto them by another patent, and a *si non omnes* also directed unto them.

32 H. 6. 10.

(a) See L. 5 Ed. 4. 129, 137, these points resolved; viz. 1. That an association may be on a special assise, by a special patent. 2. That by the writ of admittance he is not justice (associate) without shewing also the patent of association. 3. That by the patent of association he is justice,

though there be no writ of admittance. 4. Though the words of the patent of association shall be only *ad assisum hac vice capiendam*; yet his power remains till the assise be determined, although it depend through divers adjournments.

But

C But in a general patent of assise to take all assises and juries, &c. an association lieth. But *M. 32 H. 6.* it is holden that an association after another association allowed and admitted doth not lie, nor can the justices admit other association in that writ afterwards, so long as that writ and commission stand in force. 32 H. 6. 10.
L. 5. Ed. 4.
Br. Assise 326.

D But in a special assise no association shall be made as it is holden the same year, *M. 32 H. 6.* for he hath not in the writ these words, *et his quos sibi associavimus.* But the writ is directed to the sheriff without these words in the writ, nor are those words in the patent made to the justices of that special assise.

E But if those words be in the writ, and in the patent made to the justices, then it seemeth an association shall be made in that special assise, as in other. And it appeareth in the Register that the other association lieth after association in one writ.

F And upon a new commission made to other justices, the old justices of assise shall deliver their records of the assise unto the new justices by indenture, upon a writ directed to them to deliver the records.

G And a man may sue a patent of association for several assises; and the form of the writ is such:

We have associated you or either of you, &c. to take the assise of novel disseisin which A. hath arraigned before, &c. of tenements in N. and to take the assise of novel disseisin which C. hath arraigned before the same, &c. against the aforesaid B. of tenements in the same town; nevertheless, so that if, &c.

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A And if the king make two men his justices of assise in one county, and afterwards one of them be elsewhere in the king's service, (a) so that he cannot attend to take those assises or juries, then the king by patent may make another justice in his room, to take those assises and juries, and that patent is in the nature of an association; and the form of the writ is such:

(a) Or be dead; and note; a justice of assise cannot record a nonsuit and such may take the assises without any re-attachment sued, although the assise be removed. 28 Aff. 2.
45 Aff. 3. Where one is made a justice *ad omnes assisas capiend'*, it is good;

Writ of Association in Assise, &c.

Yet he is judge
before they ad-
mit him, by
Markham, L. 5
Ed. 4. III. Br.
Ail. 386.

The king to his beloved and faithful A. greeting: Know you, that we had constituted you and our beloved and faithful G. our justices to take all assises, juries and certificates arraigned before any of our justices whomsoever by our writs in the county of L. and the aforesaid G. attends by our command certain other services of our's elsewhere, by reason whereof he has not leisure for the taking the same assises, juries and certificates, as we have received information; we have constituted our beloved and faithful W. our justice in the place of him the said G. to take the assises, juries and certificates aforesaid, together with you; and therefore we command you, that you admit him the said W. your companion in the place of him the said G. for this purpose, in manner aforesaid; for we have commanded him the said W. that he attend for this purpose in the place of him the said G. together with you, &c.

And a patent shall be made to him who shall be associate unto them in the place of G. which shall be such:

The king to his beloved and faithful W. greeting: Know you, that whereas we have lately constituted our beloved and faithful A. and G. our justices to take all assises, &c. (as above, until) as we have received information, we have constituted you our justice in the place of him the said G. to take the assises, juries and certificates aforesaid together with the aforesaid A. and therefore we command you, that you attend for this purpose with the aforesaid A. in the place of him the said G. to do in form aforesaid, &c. saving, &c. for we have commanded him the said A. that he admit you his companion for this purpose in the place of him the said G. as is aforesaid: In witness, &c.

And if the king make three justices in assise, and afterwards one of them die, the king may make a new patent of association unto another to associate him and the two in the room of him who is dead, and a close writ shall be directed to the two justices who are alive to admit him; &c. and it appeareth by the writ, that if the king make three justices to take assises, and make them a patent of *si non omnes*, if one of them die, yet the other two may proceed; and the patent is such:

L. 5 Ed. 4. III.
Br. Ail. 386.

The king to his beloved and faithful I. of O. greeting: Know you, that whereas we have lately constituted our beloved and faithful

faithful I. I. and S. our justices to take all assises, juries and certificates arraigned before any of our justices whomsoever by our writs in the county of S. and after the death of the aforesaid S. divers assises, juries and certificates are arraigned before the aforesaid I. and I. we, for certain causes, have constituted you our justice, as well to take all assises, juries and certificates arraigned before the aforesaid I. I. and S. and afterwards before the same I. and I. as before any of our justices whomsoever in the county aforesaid together with the same I. and I. we therefore command you, that you attend to take the assises, juries and certificates, together with the aforesaid I. and I. in manner aforesaid, to do, &c. saving, &c. for we have commanded the aforesaid I. and I. that they admit you their companion for this purpose, as is aforesaid.

And a close writ shall be directed to the justices to admit the said justice *W.* into their society.

C And the king may make association in juries as well as in assises, and also in attaints. And if the king make a commission to take an attaint or other jury, and an association in the same, and after one of the justices die, the king may make a new association in the same writ, and so he may make one association after another in the same writ, as appeareth by the Register; and the writ is such:

The king to his beloved, &c. I. of M. R. of M. and I. of F. greeting: Whereas we have lately appointed W. of O. and you the aforesaid I. of M. and R. our justices, to take the jury of twenty-four knights which R. hath arraigned before the aforesaid W. and you the aforesaid I. of M. and R. by our writ against P. to convict the jurors of an assise of novel disseisin, which was summoned between him the said P. and the aforesaid R. and taken by our writ at H. before the aforesaid W. and you the aforesaid R. of tenements in S. in the county of N. and afterwards by our writ we associated unto you (the aforesaid I. of M. and R.) you the aforesaid I. of F. to take all assises, juries, &c. arraigned in the said county, together with the said W. and you, with the aforesaid I. of M. and R. or two of you, and that jury before the aforesaid W. and you the said R. and I. by virtue of the association aforesaid, until to the taking thereof, stood by the pleading,

Writ of Association in Affise, &c.

and the said W. being now dead, we have constituted in the place of him the said W. our beloved and faithful B. to take that jury together with you; we command you, that you admit the aforesaid B. for this purpose in the place of him the said W. and proceed together with him to take that jury, according to the law and custom of our realm; for we have commanded the aforesaid B. that he attend together with you for this purpose, as is aforesaid.

Forby 2 H. 4. 2.
he is officer,
judge and com-
missioner in this
writ.

And thereupon another patent shall be made to the said B. of association, as before in other cases.

And an association may be made unto the sheriff upon a writ of re-disseisin directed to him, as well as it may be upon an affise of *novel disseisin*, as appeareth by the Register; which writ was awarded by *W. de Harloston*.

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12 H. 4. 19, 20.
L. 5 Ed. 4. 111.
Br. Affise 386.
14 Aff. 15. Br.
Aff. 196.

And although the affise be discontinued for the not coming of the justices, &c. yet when the re-attachment is sued, the writs of association and of *si non omnes* stand in force; and a re-attachment shall or may be sued to revive those affises; (a) although there be several adjournments of the affises, yet the associations and writs of *si non omnes* shall serve for all the affises.

Writ of Redisseisin.

THE writ of re-disseisin (a) lieth where a man recovereth by affise of *novel disseisin*, land, rent or common, and the like, and is put in possession thereof by verdict, and afterwards is disseised of the same land, rent or common, by him by whom he was disseised before; then he shall have this writ upon the statute of *Merton*, c. 3. and the form of the writ is such:

The king to the sheriff, &c. A. and B. his wife, have shewed unto us, that whereas R. formerly the husband of the said B. and

(a) See it accordingly adjudged, 12 H. 20, 22. 14 Aff. 14. be the association in general, or the affise taken by special adjournments.

(a) If he distrains for the rent he shall have a re-disseisin on a rescous made, without any other seisin. 40 Aff. 23.

for the said B. in our court, before our justices last itinerant, at N. in your county; or thus, before our beloved and faithful H. and K. our justices assigned to take the assises in the county aforesaid at, &c. (or thus if the justices were dead) before H. and his companions lately our justices assigned to take the assises in the county aforesaid at N. recovered their seisin against S. of twenty acres of land and ten shillings rent with the appurtenances in K. by the recognizance of an assise of novel disseisin between them, &c. or thus, taken between the aforesaid A. B. and S. the aforesaid S. again hath unjustly disseised them the said A. and B. of the land and rent aforesaid; or thus, of one acre of land of the land aforesaid; and therefore we command you, that taking with you the keepers (b) of the pleas of our crown, and twelve, as well knights as other free and lawful men of your county, as well of those who were in the first jury, as of others, you go in your own person to the aforesaid land and tenement from whence the rent issueth, and by the said twelve diligently make inquisition thereof, and if you shall find that they the said A. and B. are again unjustly disseised by the aforesaid S. of the said land and rent, then take him the said S. and cause him to be safely kept in our prison, so that he be in no wise removed from that prison without our special command, and them the said A. and B. to be re-seised of the said land and rent, and cause double their damages which they have sustained by reason of that re-disseisin, to be taxed by the oath of the aforesaid twelve, and to be levied without delay of the goods and chattels of the aforesaid S. in your bailiwick, and to be rendered to them the said A. and B. according to the form of the statute provided in such like cases of re-disseisin: (c) and give notice to the aforesaid S. and D. who now hold

(b) 23 Aff. 7. If there be but one coroner in the county, he may make it, otherwise all must join. 20 H. 6. 17. and *note*; a re-disseisin taken before the sheriff and one coroner is not good. Also *note* this clause *assumptis tecum*, &c. was omitted, and therefore the writ abated, 26 Ed. 3. 57. and herein the sheriff is judge. 1 H. 4. 5. but if there are four coroners, but one is dead, the sheriff ought to return this. It seems, that if the writ be *accedas ad villam ubi tenementa prædicta sunt*, &c.

it is erroneous, 11 H. 4. 6, 94. adjudged. But if the rent issues out of more (many) lands in divers villis, it is sufficient to take the re-disseisin in one vill only, 40 Aff. 23. but the view ought to be made of all.

(c) See 9 H. 4. 5. *Note*; The sheriff is judge here, and therefore it seems the array is not challengeable, but the panel is; and it seems that the sheriff may receive pleas herein, as a release, &c. *Kelw.* 125. 40 Aff. 23.

that land, that they may be present at the making of that inquest, if to them it shall seem expedient. *Witness, &c.*

And by this writ it appeareth, that a man shall have a redisseisin against the tenant, if he recover by assise of *novel disseisin* before justices in eyre, or before justices of assise; (a) and so if he recover in assise of *novel disseisin* in the king's bench or common pleas, if he be re-disseised, he shall have this writ of re-disseisin.

1 Inst. 154. b.
9 H. 4. 5.

If husband and wife be disseised, and recover by assise, and the husband die, and the wife take another husband, and they be disseised again, by the Register they shall have a writ of re-disseisin although the husband were not disseised before; and the writ willeth that the sheriff inquire whether they were disseised before. And if the husband were not it is not material, because it is the right (b) of the wife, and she was disseised before. But if the wife lose in the assise of *novel disseisin*, and afterwards take husband, and they re-disseise the plaintiff, he shall not have a writ of re-disseisin; *quod vide H. 9 H. 4.*

(c) And also a re-disseisin lieth against him who committed the re-disseisin, and against another who was not disseisor, if he be tenant of the land.

And also if a man recover land by assise of *novel disseisin*, and after he be re-disseised of parcel of the same, he shall have a writ of re-disseisin.

And in a re-disseisin against husband and wife the writ shall be thus in the end; *and the same A. double his damages which he hath sustained by reason of that re-disseisin, to be levied of the lands of them the said B. and S. and of the chattels of him the said B. in your bailiwick*; because the wife hath not any chattel.

(a) See 26 Ed. 3. 57. A writ of re-disseisin granted on a recovery in B. R. sued in chancery, and held good by the award of court.

(b) See 9 H. 4. 5. And it seems one may have a special writ supposing that the wife *dum sola* was re-disseised; but not that the husband and wife re-disseised, *Quare post.* 191. it seems no

law; and that the wife only shall be taken.

(c) If one recovers in an assise and is re-disseised by the disseisor, another re-disseisin lies, *per Thinning*, 9 H. 4. 5. for jointenancy is a good plea in a re-disseisin, 33 Ed. 3. *Re-disseisin* 7. And note this judgment in re-disseisin, *Quod recuperet seisinam suam. Rast. Entr.* 548.

I And if the sheriff will not execute the writ of re-disseisin, he shall have an *alias* and a *pluries* directed to him, and if he then do it not, he shall have an attachment against him to the coroners, &c. and upon the same, distress infinite.

K And it appeareth in the Register, that a man shall have a writ of association in a re-disseisin; and the writ is such:

The king to the sheriff, &c. Know you, that whereas lately at the prosecution of N. suggesting to us, that he in our court before, &c. at K. by our writ recovered his seisin against S. &c. (reciting the whole writ, until) if to him it shall seem expedient, we have associated unto you our beloved and faithful R. to do and fulfil the premisses together with you; yet so that if at a certain day, which you shall appoint for this purpose, be the said R. happens to be present, then you admit him your companion for this purpose, otherwise (the presence of him the said R. not being expected) you may proceed to do and fulfil the premisses: and therefore we command you, that you admit him the said R. your companion for this purpose, in form aforesaid; for we have commanded him the said R. that he attend with you to do and fulfil the premisses, as is aforesaid.

And by the Register, the writ directed to the sheriff shall be close, as also the other writ directed unto him who is associated to him, and yet the same is in its nature a patent.

L And if a man recover by assise of *novel disseisin*, common of pasture or other profit apprender in the soil of another, or any office or corody; if he be re-disseised, he shall have a re-disseisin; and the writ shall be such:

The king to the sheriff, &c. A. hath shewed unto us, that whereas he in our court before our beloved and faithful W. and his companions our justices assigned to take the assises, &c. at N. by our writ recovered his seisin against I. of common of pasture in S. which belongs to his freehold in the same town, by the recognizance of an assise of novel disseisin there taken thereof between them, the aforesaid I. hath again unjustly disseised the aforesaid A. of the common of pasture aforesaid; and therefore, &c. you go to that pasture, and by their oath, &c. (of reasonable estovers, thus) recovered his seisin against I. of his reasonable estovers to be taken in three hundred acres of wood with the ap-
pur-

Writ of Redisseisin.

purtenances in W. which belong to his freehold in the same town, by recognizance of assise, &c.

And if a man recover by assise of novel disseisin any land A or tenement before the bailiffs of any liberty, where they demand conuſance of pleas before justices of assise, and the justices grant the same, because the lands are within that liberty, and afterwards he be re-disseised of the same land, then he shall have writ of re-disseisin; and the writ shall be such:

The king to the sheriff of Berks, greeting: A. hath shewed unto us, that whereas he lately arraigned a certain assise of novel disseisin before our beloved and faithful I. and his companions, &c. assigned by our writ against P. of two feet of land in length and one foot of land in breadth with the appurtenances in W. which said assise was returned by the same justices into the court of the abbot of Reading, according to the liberties granted to the same abbot by the charters of our progenitors, formerly kings of England, and our confirmation thereof, to be pleaded before the bailiff of the same abbot, and the same A. recovered his seisin of the land aforesaid against the said E. in the same court, by recognizance of an assise of novel disseisin there taken between them, the aforesaid E. hath again disseised him the said A. of the said, &c. (as in the first writ).

And also a man shall have a re-disseisin upon a recovery B in assise of nuisance, of a pool unjustly levied, &c. or of a water-course diverted, or of a way straightened or obstructed; and the form of the writ is such:

The king to the sheriff, &c. A. hath shewed unto us, &c. (until) assigned, arraigned a certain assise against B. by our writ of a certain pool unjustly raised in N. to the nuisance of his freehold in K. and by the recognizance of the same assise thereof between them taken at E. before the same justices, that pool raised by the aforesaid B. was disallowed and to be lowered; the aforesaid B. hath again unjustly and without judgment raised that pool: and because this is unjustly and manifestly against our peace, we command you, that taking with you, &c. (until) you go to that pool and tenement, and by their oath make inquisition thereof diligently, and if you shall find by that inquisition, that he hath again unjustly raised the said pool, then take him the said B. &c. (until) special command, and cause that pool to be lowered

lowered without delay, and the same A. to have double his damages which he hath sustained by reason of that re-disseisin, &c. according to the form of the statute, &c. (as before).

- C And the like writs are in the Register of re-disseisin, for the diverting of water, or of a way, or obstructing one in an office, and the like. Ant. 66.

And if the sheriff deliver any such, without the special command of the king, who are convict of such re-disseisins, he shall be grievously amerced, and those who are so delivered, shall be also grievously punished, &c. by the statute of *Marlebridge*, cap. 8.

And by the statute of *Westm. 2. cap. 26.* he who recovereth in a re-disseisin, shall recover double damages; and the defendants shall not be bailed by a common writ; and by the same statute is given a writ of *post-disseisin*, in which writ he shall also recover double damages against the defendant.

- D And if a man recover by re-disseisin, and afterwards be disseised again by him by whom the first re-disseisin was before, he shall have a new re-disseisin; and so one re-disseisin after another every time he is re-disseised.

- E And a re-disseisin shall be maintainable against any of the disseisors.

- F And if a man recover land by assise of *novel disseisin*, unto which a common is appendant, &c. and after he is disseised of the common again, he shall have a re-disseisin. &c. 1 Inst. 154. b.
8 Ed. 3.
Rediss. 6.

- G And if a man sue a writ of *droit close*, and make protestation in the nature of assise of *novel disseisin*, and recover in that writ, and after be re-disseised, he shall not have a re-disseisin; for that writ doth not lie upon an assise at the common law. *M. 14 Ed. 3.*

- H And if all the jurors in the assise be dead but one, and afterwards he who recovered be re-disseised, &c. it is a question whether he shall have a re-disseisin, because the statute is *per primos juratores & alios*, &c. which see debated in *H. 8 H. 5.* But it seemeth that the statute makes the law, and because it is a penal statute it shall be taken strictly; and therefore if all the jurors be dead but one he shall not have a re-disseisin, because he cannot be tried by the former jurors; 1 Inst. 154. a.
27 Aff. 7.
1 Inst. 145. a.

jurors; for one juror is not a sufficient witness himself, to say that it is a re-disseisin of the same tenements; and therefore it seemeth there ought to be two jurors to testify the same.

3 H. 5. 1.
Per Pole contr.
Hank. in
Error.

And tenant by statute-merchant or staple shall have an assise of *novel disseisin* if he be ousted; and also a re-disseisin if he be re-disseised.

And so tenant by *elegit* shall have an assise of *novel disseisin*, and a re-disseisin if he be ousted, by the statute of *Westm.* 2. c. 18.

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Writ of Post-Disseisin.

THE writ of *post-disseisin* is given by the statute of *A Westm.* 2. c. 26. and lieth where a man recovereth lands or tenements by a *præcipe quod reddat*, by default or reddition, and afterwards is ousted again by him against whom he recovered, &c.; then he shall have the writ of *post-disseisin*, and shall recover double damages, and the party shall be punished as he should be if he were attainted of re-disseisin: but if he recover by assise of *mortdaunceflor* or *juris utrum*, or in those actions which pass by juries and verdicts, then he shall have his writ founded upon the statute of *Merton*, c. 3. *cf post-disseisin*. And this writ shall be directed to the sheriff as the writ of re-disseisin shall be; and if the sheriff will not execute the writ as he ought to do, and as he is commanded, then the party may sue forth an *alias* and a *pluries*, *vel causam nobis significes*, &c. And if the sheriff neither do any thing, nor return a cause, then the party may sue an attachment against him directed to the coroners, &c. and upon that a distress; and the form of the writ of *post-disseisin*, is such:

The king to the sheriff, &c. A. hath shewed unto us, that B
whereas he, in our court before our beloved and faithful W. and
his companions our justices of the bench at E. by our writ recovered
his seisin against I. of one messuage with the appurtenances in
S. by the consideration of the same court; he the said I. hath since
unjustly disseised the aforesaid A. of the land aforesaid; and there-
fore

fore we command you, that taking with you, &c. (as in the writ of Re-disseisin, &c.) lawful men of your county, you go, &c. (until) afterward unjustly disseised him of the land aforesaid, then him the said I. &c. (until) which he hath sustained by reason of that post-disseisin, &c. according to the form of the statute of Westminster provided touching such Post-Disseisin; and give notice to the aforesaid I. that, &c.

And in a post-disseisin the writ shall not say, *tam de illis qui in prima jurata*, unless it be where he recovereth by recognizance of the assise or jury :

C And if a man recover lands or tenements in value against the vouchee in a *præcipe quod reddat* by default, and afterwards be put in execution by the sheriff, and the vouchee disseise him of the same lands which he so recovered in value, he shall have a post-disseisin of that land so recovered in value against the vouchee. And the writ is such :

5 R. 2. Br. 9.

The king to the sheriff, &c. C. hath shewed unto us, that whereas B. prior of D. lately in our court before our beloved and faithful R. F. and his companions our justices of the bench at Westminster, by writ demanded against the aforesaid C. seven acres of meadow with the appurtenances in I. and he the same C. vouched to warranty thereof in the plea aforesaid R. of S. and by the default which he the same R. afterwards made in the same court, it was considered, that the aforesaid prior should recover his seisin against the aforesaid C. in the plea aforesaid, that he the said C. should have of the meadow of the aforesaid R. of S. to the value of the aforesaid seven acres of meadow, by virtue of which consideration, seven acres of meadow with the appurtenances of the meadow of the aforesaid R. of S. in G. were assigned to the aforesaid C. by our then sheriff of Gloucestershire, by virtue of our certain writ of judgment to him in this behalf directed, the aforesaid R. of S. afterwards unjustly disseised the aforesaid C. of the said meadow to him assigned, as is premised; and therefore we command you, that taking with you, &c. twelve as well knights as other free and lawful men of your county, in your own person you go to the aforesaid meadow assigned to him the said C. and by their oath diligently cause inquisition to be made thereupon, and if you shall find that he the said C. was afterwards unjustly disseised by the aforesaid R. of the said meadow

meadow assigned to the said C. then take him the said R. and cause him to be kept safe in our prison, so that he be in no wise delivered from that prison, without our special command, and cause him the said C. to be re-seised of the aforesaid meadow to him assigned, and double his damages which he hath sustained by reason of that Post-Disseisin, by the oath of the aforesaid twelve to be taxed, and levied without delay, of the goods and chattels of the aforesaid R. in your bailiwick, to be rendered to him the said C. according to the form of the statute provided in case of such Post-Disseisin, and give notice to the aforesaid R. &c. Witness, &c.

15 H. 7. 8.

And if the defendant make default at the return of the *scire facias* served, then the sheriff shall take the inquest by default, and the process against the jury shall be by precept from the sheriff to his bailiff, &c. to summon twelve, &c.

And if a man recover in a *scire facias* upon a fine, or upon a recovery had before by default of the tenant, he shall have a post-disseisin against the tenant, if he be afterwards ousted of the same land; *quod vide* Tr. 15 H. 7.

2 Inst. 115.

And if a man be convicted before the sheriff upon a re-disseisin and post-disseisin, then he shall not be delivered out of prison without the king's special command, and then he ought to sue a *certiorari* to remove the record into the king's bench, and there to agree with the king for his fine. And thereupon he shall have a writ to the sheriff to deliver him out of prison; and the form of the writ to remove the record is such:

The king to the sheriff, &c. On the behalf of Henry of D. taken and detained in our prison of Stafford for a certain re-disseisin made by him to Isabel, who was the wife of Ric. of C. of a moiety of one messuage with the appurtenances in C. as it is said, whereof he was convicted before you and the keepers of the pleas of our crown in your county, by an inquest made thereupon at C. by our writ, we are besought, that whereas he hath already made satisfaction to her the said Isabel for the damages adjudged to her in this behalf, and is ready to make a fine with us for that which to us belongs in this behalf, according to the form of the statute thereof provided by the common council of our realm: we willing to provide for his delivery, and that we
may

may be able to do to him the said H. that which shall be just thereupon, willing to be certified upon the record and process of the inquisition aforesaid; command you, that if judgment be thereupon given, you send the record and process of the inquisition aforesaid to us, with all things touching them, under your seal distinctly and openly, so that, &c. wheresoever, &c. that we may further do thereupon that which of right, &c. to be done, &c. Witness, &c.

A And this writ of post-disseisin ought to be brought by those who first recovered, or by some of them, and of the same land which was recovered, or of part thereof, or against those, or some of them against whom the recovery was.

7 Ed. 3. 24.
con.

But if a man recover by a *præcipe quod reddat*, and after be disseised by him against whom he recovered, and the disseisor make a feoffment, and take back an estate to him and another; he who first recovered shall have a post-disseisin against him and his jointenant, as it seemeth, and he shall be punished by the statute, if it be found against him.

But if he who loseth the land by default or reddition in a *præcipe quod reddat*, afterwards disseise him who recovered, and make a feoffment in fee unto another, or for life, it seemeth he who recovered shall have a post-disseisin against him who disseised him again, although he be not tenant of the land; for in the writ of post-disseisin the demandant shall not have judgment to recover the land, &c. but the sheriff shall put and restore the plaintiff to his possession, if he find the disseisin, &c. and shall take the defendant and keep him in prison until, &c.

B And it seemeth, that non-tenure is no plea in a writ of post-disseisin for the defendant, but he ought to answer the disseisin, &c. when he comes in upon the *scire facias*, &c. And if he make default upon the *scire facias* returned, the sheriff shall take the inquest: *tamen quære*.

6 H. 6. 6.
7 R. 2.
Entry 55.

Writ of Entry in the Nature of Assise, which is called, Entrie in de Quibus.

9 H. 5. 13.
If this writ be brought against a person, he shall not have aid of the patron and ordinary.

A Writ of *de quibus*, which is brought in the place of C an assise, is where a man is (a) disseised of any lands, tenements or rents, whereof he hath an estate in fee, then he may sue this writ, and the writ is such :

The king to the sheriff, &c. Command A. that justly, &c. he render to B. one messuage with the appurtenances in D. which he claims to be his right and inheritance, of which the same A. unjustly and without judgment disseised the aforesaid B. after the first voyage of lord Henry, king, into Gascoigne, &c. as it is said. And unless, &c.

And if a man bring a writ of disseisin made to his ancestor, then the writ is of another form, thus :

20 Ed. 2.
Brief 351.

Command A. that justly, &c. he render to B. one messuage with the appurtenances in D. which (b) he claims to be his right and inheritance, and of which the same A. unjustly and without judgment disseised C. father of the aforesaid B. (or other ancestor of the said B.) whose heir he is, after the first voyage of lord king Henry, &c. as it is said; (or thus, in the per) which he claims, &c. and into which, &c. but by C. who demised that messuage to him, who unjustly disseised E. the father of, &c. or the aforesaid B. &c. after the first, &c.

And in the *Per* and *Cui*, thus :

Which he claims, &c. into which, &c. but by C. to whom D. demised that messuage, who thereof unjustly and without judgment, &c. the aforesaid E. father of the aforesaid B. whose heir he is, or the aforesaid B. &c. after the first, &c.

And in the *Post*, thus (c) :

(a) See accordant 9 H. 5. 9. and that after a plea to the writ he shall plead over to the disseisin. 8 R. 2. Brief 928.*

(b) See before writ of entry, viz. *In quibus non habet ingressum per l. S. qui dimisit dum habuit Custodiam ingr'*, 15 H. 3. Brief 878; or per J. S. *qui tenuit in Villenage*, 31 Ed. 3. Counterplea of voucher 121. But see a writ

Quod non habet ingressum nisi per Custodiam, and it was abated; for by the statute he might have an assise, or a writ of entry *sur disseisin*. 4 Ed. 2. Brief 790.

(c) Note; This writ in the *Post* lies by the statute of Marlebridge, chap. the last; for before that statute he was put to his writ of right. 19 H. 4. 39.

*The authority cited from 9 H. 5. 9. is to show that a writ of entry in *de qui*. Which has been, though an assise lies, which was argued in the case by the Dpt. & the Court said that the writ of entry lay, notwithstanding the assise. In the case cited 8 Rich. 2. 15th. Brief 428. The Tenant to a writ of entry *sur disseisin* in, the Dpt. pleaded that no tenant of the land was named in the writ, &c. The Court said that is a *propter quod non datur*, & not *quod non* in which writ the plea is not as in assise. & therefore the Dpt. pleaded *non tenere*. It seems therefore that the note is a mistaken view of the case.

(2) "Dum puit infra statum & habuit Custodiam!"

Which he claims, &c. into which, &c. but after the disseisin which D. unjustly, &c. made to E. father (or other ancestor) of the aforesaid B. whose heir he is, or to the aforesaid B. after the first voyage, &c. as it is said, and whereof he complains, &c. and unless, &c.

And it appeareth by these writs, that although he bring a writ of a disseisin made to himself, or of a disseisin made to his ancestors, in both cases the writ shall be *quod clamat esse jus & hereditatem suam*.

E And if tenant for life, or tenant in tail be disseised, they may sue a writ of disseisin *de quibus, &c.* but in that writ it shall not be said, *which he claims to be his right and his inheritance*, and in the count he shall be set forth the especial estate, &c. (a). 20 Aff. 1
sum of this count
20 Aff. 1.

F And an abbot, or prior, or master of an hospital, or a bishop, shall have a writ *de quibus* upon a disseisin of their predecessors of lands, tenements, or rent; and the writ shall be such :

Command A. that justly, &c. he render to the prior of N. one messuage with the appurtenances, which he claims to be the right of the church of him the said prior of Saint Mary of N. &c. and into which the same A. hath not entry but after the disseisin, which I. unjustly and without judgment thereof, made to R. some time prior of N. predecessor of the aforesaid prior, after the first, &c. as it is said, whereof he complains, &c.

And if it be a rent, thus :

The king to the sheriff, &c. Command I. M. that justly, &c. he render to the prior of C. (b) three shillings rent, with the appurtenances in D. which he claims to be the right of the church of him the said prior of St. Nicolas of C. and of which W. D. unjustly and without judgment, disseised W. some time prior of C. aforesaid, &c.

(a) Note; The writ, and also the count shall be special; viz. that A. gave to B. for life, remainder to C. in tail, whose cousin and heir, D. aforesaid is; but he need not shew how cousin and heir, in the count, 21 H. 6. 26. and see there, that the writ shall

be *de libero tenemento*, though the count be of an estate-tail, or for life. Dyer 101.

(b) *Tres solidi, &c.* It may be *Quod Quam clamat, &c.* as agreeing with *Reddis*, or *Quos clamat*, and so refer to *solidos*. See 18 Ed. 2. Brief 833. ⁷

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(4) The copy seems to show that it should be *quod*. & not *quem*. See Brief 833.

And the aunt and the niece shall join in the writ, upon a G disseisin made to the father of the one, who is the grandfather of the other.

13 Ed. 3.
Entry 57

And a writ of *entrie sur disseisin* made unto an ancestor of H a stream lieth, and the writ shall be, *præcipe quod reddat unum gurgitem*, and in his count he shall allege the esplees in taking fish.

And so he shall have a writ of *entrie in de quibus* upon the I disseisin of a passage; *quod Vi. H. 8 Ed. 3.*

22 Ed. 3. 7.
Entry 11.
22 Ed. 3. 7.
23 Ed. 3. Fitz.
Entry 11.

(c) And if the disseisor infeoff the king, who infeoffeth K another in fee, the disseisee shall have a writ of *quibus* upon the disseisin against the king's feoffee in the *post*, &c.

[192]
1 Ma. Dyer.
201.

And if tenant in tail bring a writ of *quibus* upon a dis- A seisin made to himself, he may count that he was seised in his demesne as of freehold, without shewing any particular estate, or how the estate began, or he may count upon the special matter, and shew the gift in tail; *quod Vi. P. 33 H. 6. 16.*

(d) And a man may have a writ of *entrie de quibus*, B upon a disseisin of a common, *that he render, &c. pasture for ten sheep, &c.* which see *Easter 4 Ed. 3. 4.*

14 H. 4. 10.
Hankf.
24 Ed. 3. 70.
Yet no *Præcipe*
will lie of a
marsh because
properly it can-
not be rendered.
22 Ed. 3.
Br. Demand 23.
39 H. 6. 8.
v. 19 H. 6. 8.
he shall have a
præcipe by the
name of a house.

(a) And a man shall not have a writ of *entrie* in the *post*, C where he may have it within the degrees, namely, in the *per*, or in the *per* and *cui*.

If a man disseise the father of a marsh, and maketh the D same meadow, and the father dieth, the son and heir shall have a writ of *de quibus* upon a disseisin made to his father of that meadow, and by the writ he shall demand the lands, by the name of a meadow, and not by the name of marsh (b).

And so if it be land covered with water, whereof he is disseised, and the disseisor make it meadow, the disseisee shall have a writ of *quibus*, and by this writ demand the

(c) But though the king ousts J. S. without cause, and grants to B. J. S. shall not have a writ of entry. *H. 1*

(a) One may falsify the degrees by plea after a *Prece partium*. 14 H. 4. 39. 40 F. Brief 248.

(d) *Viz.* As pernor, but not as tenant of the soil; but in that case is put to his *Quod permittat*. 4 Ed. 2. Brief 791 (1)

(b) 33 Ed. 3. Entry 40. 4 Ed. 3. 47. 4 Ed. 3. Feoffments 79. 39 H. 6. 8. F. Entry 8.

(1) Inaccurate. The case in 4 Edw. 2. Fitz. Brief 792. decides that a *præcipe quod reddat* in such case lies ^{not} of *pasture*, against the pernor tenant of the soil: for in such case a *quod permittat* lies: but it is good against other persons.

meadow, and suppose that he was disseised of meadow by the writ, &c. (c).

And so if a man be disseised of land, and he build a house upon the same, he shall suppose the disseisin to be of a house, &c. *quare* of this (d).

And the writ of *quibus* upon disseisin of an office is such :

E The king to the sheriff, &c. Command H. abbot of Peterborough that justly, &c. he render to B. the office of serjeant in the abby of Peterborough, and the rent of twenty-four loaves of bread, forty flagons of ale, and six messes of meat with the appurtenances, in the city of Peterborough, which he claims to be his right and inheritance, and of which the same abbot unjustly and without judgment hath disseised him, &c.

F And against him who cometh in unto any land by (e) recovery, or by election, or by succession, or by disseisin, the writ shall be brought always in the *post*.

Writ of Dum fuit infra Ætatem.

G A Writ of *Dum fuit infra ætatem* lieth, where an infant maketh a feoffment in fee of his lands, or for life, or a gift in tail, when he cometh of full age, he may have this writ to recover those lands or tenements which were so aliened by him, &c. And within age he may enter into the land, and take it back again, and by his entry he shall be remitted

(c) See *Trin. 3 Jac. 1. B. R. Rot.*
10.

(d) In dower the demand was of the third part of two mills, the tenant pleads, that at the day of the writ purchased, they were two tofts, and he was put to say, *and yet are* ; tho' the plaintiff had only said they are two mills, and did not say that they were the day of the writ purchased ; for it is sufficient for him if they were mills at the time of the demand, and so in an assise ; *contra* in a *Præcipe*. See 1 *H. 5. 11. 4 Co. 87. Dyer 47. 14 Aff. 12.* See *Pasch. 33 Eliz. Rot. 1308. Hayes and*

Allen ; the husband aliens the wife's house, the wife abates the house and builds a new one, whereof the side walls stand on the tenant's land ; yet the wife, shall have a *cui in vita* of the house, because it is a house at the time of the demand ; yet she shall not recover the whole house. 33 *Ed. 3. Entry- 4 Ed. 3. Feoffments 79.*

(e) See where a recovery makes a degree. 5 *Ed. 2. Entry 66. 7 Ed. 3. 62. Cui in vita 11.* See 11 *Ed. 3. Entry 56.* where a recovery against the party shall not remit to the degrees.

39 H. 6. 42.
In 46 Ed. 3.
34. A Dum fuit
infra ætatem was
admitted of a
rent, and yet by
some the gift is
void; but the de-
livery of the deed
is not void.
Post. 202.

to his ancestor's right; but yet he shall not maintain this writ until he be of full age of twenty-one years, for the words of the writ suppose this *while he was under age*, by which it appeareth that he is not within age at the time of the writ, &c. And also the writ is such; *who is of full age as he saith*, by which it appeareth that he ought to be of full age (a), when he bringeth this writ; and the writ is such:

The king to the sheriff, &c. Command A. that, &c. he render to B. who is of full age, as he saith, two messuages, &c. which the same B. while he was under age demised to him, as he saith, and unless he will do it, &c. (And so in the per) into which the same A. hath not entry but by C. to whom the aforesaid B. demised them. (And in the Post, thus) into which, &c. but after the demise which the aforesaid B. while he was under age thereof made to W. as it is said, and whereof he complains, and unless, &c. But the clause, who is of full age, shall not be put in the writs of per cui or post, but only in the first writ, by grant made by the demandant to the tenant.

And if a man bring this writ upon the alienation of his ancestors, then this clause, *who is of full age*, shall not be in the writ, and yet the infant shall have a *Dum fuit infra ætatem* of a seisin, and alienation of his ancestor during his nonage; and the writ shall be such:

Command A. that, &c. he render to B. one messuage with the appurtenances, &c. which he claims to be his right, &c. and into which the same A. hath not entry but by C. the father (or other ancestor of the said B.) whose heir he is, who demised it to him while he was under age; or thus, which he claims, &c. and into which, &c. but by C. to whom D. grandmother of the aforesaid B. whose heir he is, while the same D. was under age, &c. (And in the Post) which he

(a) See 13 Ed. 3. *Dum fuit infra* 3. Where a *dum fuit infra ætatem* was brought of tenements in Gloucester, and the defendant pleads that when one knew how to count twelve pence, or to measure an ell of cloth, he might alien by the custom of the vill, and that

the plaintiff was of such an age when he leased, that he knew how, &c. and because he did not set forth the age in certain as to the number of years, so that the party might have joined issue thereon, judgment was given for the demandant.

claims,

claims, &c. and into which, &c. after the demise which D. the aunt or cousin of the aforesaid B. whose heir he is, while she the same D. was under age, thereof made to H. as it is said, and whereof he complains, &c.

K (b) And if two infants be jointenants, and they alien the land during their nonage, at their full age they ought to sue forth several writs of *Dum fuit infra Ætatem*, because their nonage is the cause of the action which is several, for the nonage of the one is not the nonage of the other, nor the alienation of the one, the alienation of the other.

34 H. 6. 3.
D. vers ac.
19 H. 6.
Ac de cui in
vita.

L And if the husband and wife, alien the wife's lands during the nonage of the husband and wife, the wife at her full age, after the death of the husband, shall have *Dum fuit infra Ætatem* for such alienation. *M. 14 Ed. 3.*

See 14 Ed. 3.
Brief 282.

But if the husband be of full age, and the wife within age, and they both alien the wife's lands, and then the husband die, it is a question, whether the wife shall have a *dum fui infra Ætatem* (a), and I conceive that she shall have a *dum fuit infra Ætatem*, or a *cui in vita*, as she pleaseth, for when they join in a feoffment of the land, it shall be said the feoffment of the wife, until she disagree; for if the husband and wife make a gift in tail, or a lease for life of the wife's lands rendring rent, if the husband die, the reversion is only in the wife, and she may accept the rent, and the same shall bind her and her heirs; and then if she will not accept the rent, but, because she was within age at the time of the feoffment, she will bring a *dum fuit infra ætatem*, it seemeth she shall not be received so to do; for by that suit she affirmeth that she made the feoffment, and then it shall not be said the feoffment of the husband only, but the feoffment of the wife alone after the death of the husband, if she affirm that to be her feoffment; and by the *dum fuit infra ætatem* she doth affirm the same, and that she made the feoffment during the coverture; and on the other side

14 Ed. 3. *ibid.*

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(b) See 18 Ed. 2. Brief 831. and if the writ supposes an entry into the moiety by his demise, where it was into the whole, both the one writ and the

other is false. *N. Br. 121, 141.*

(a) 14 Ed. 3. *Aid* 27. 21 H. 6. 24. 22 H. 6. 24. 7 Ed. 4. 7 *contra.* 46 Ed. 3. *Cui in vita* 23. 46 Ed. 3. *Age* 76.

Writ of Cui in vita.

it may be said, that she doth not affirm the same to be a lawful feoffment made by her. And also by the feoffment of the husband the entry of the wife shall be taken away; but by the feoffment of the wife during her nonage, his entry shall not be taken away; and therefore *quære* the law, &c.

* This writ is now out of use, because by Stat. 32 H. 8. the Alienation of the husband does not toll the entry of the wife.

* *Writ of Cui in vita.*

THE writ of *cui in vita* lieth, where the husband aliens in fee the right of inheritance of his wife, or the freehold of his wife by feoffment, or grant for life, or in tail: then, after the death of the husband, the wife shall have *cui in vita contradicere non potuit*: and the writ lieth, for the wife where she hath an estate for life, or in tail, and the husband alieneth that estate.

39 H. 6. 38.
Pr. f. contr.
Vide 16 H. 7.
3, 9.

(b) And if the wife do not bring the writ during her life, then if she had an estate in fee-simple, her heir shall have a writ which is called *sur cui in vita* after her death. And if the wife have an estate in tail, and her husband alien, and make a feoffment of that estate; then if the wife die, her heir shall have a writ of *formedon* in the descender to recover the estate, and not a writ of *sur cui in vita*; for those writs of *cui in vita*, and *sur cui in vita*, are writs founded upon the common law, and are of an estate in fee-simple; for there was no other estate at the common law which would descend, but a fee-simple: for if the lord by the common law giveth lands to hold of him, if the tenant dieth without heir, he shall have a writ of escheat.

(a) And so by the common law, if a man gives lands to one and the heirs of his body, &c. if he dieth without heirs of his body, the lord by the common law shall have a *formedon* in the reversion of that estate for want of issue of him to whom the gift was made; but yet the donor shall have

(b) 4 Eliz. 2. 6. b. 46 Ed. 3. *Cui in vita* 23. 46 Ed. 3. Age 76.

(a) 4 Eliz. 2. 46. 46 Ed. 3. *Adjudg-* Age 76.
ed 76.

an estate in fee-simple, as I think, and that appeareth by the statute, which saith, *de tenement' quæ multoties dantur sub conditione*; by which words it appeareth, that the gift had a condition implied therein; so that it shall revert for want of such issue, and by reason of the tenure reserved, &c. but it doth not appear by the statute that he shall have an estate-tail of other nature than the estate which was by the common law; and the form of the writ of *cui in vita* is such:

a Cui in vita; because she did not execute the feoffment by delivery of the land. 34 Ed. 2. Fitz. Cui in vita 21. Plo. Com. 29 & 39. 12 Ed. 4. 3.

A feme sole made a deed of feoffment, but always after continued seisin of the land; after she took husband, who delivered the land to the party to whom the deed was made; the feme may have

C The king to the sheriff, &c. command A. that justly, &c. N. Br. 131.
he render to B. who was the wife of D. one messuage with the appurtenances in N. which (b) she claims to be her right and inheritance, and into which the same A. hath not entry but by the aforesaid D. some time the husband of her the said B. who demised it to him, whom she in her life-time could not contradict, as she saith.

D And if she hold in frank-marriage, and the husband alien, then the writ shall be, which she claims to be her right and marriage, and into which the same A. &c. but by C. to whom the aforesaid D. some time the husband of her the said B. demised it, &c.

E And this writ of *cui in vita* may be in the *per*, *cui* and *post*, and in the *post* the writ shall be,

And into which the same A. hath not entry but after the demise which the aforesaid D. some time the husband of her the said B. (c) (whom she in her life-time could not contradict) thereof made, as it is said, and whereof she complains, &c. and unless, &c. or thus, which she claims to be her right, of the gift of S. who infeoffed her the said B. thereof, and into which, &c.

(b) Note; If the feme was in of a fee simple by purchase, then the writ shall be *Quod clamat esse jus suum*; or *Quod clamat esse jus suum de dono*: And note; *jus* is always intended a fee-simple; yet it seems that in the case of purchase. *Quod clamat esse jus & hæreditatem*, is not abateable, though properly *Hæreditas* is intended by descent, and not by purchase in this writ. 7 H. 4. 5. 30 H. 6. 38. *Quod clamat esse*

jus & hæreditatem suam, though it was by purchase. 10 H. 6. 9.

(c) Note; If the writ be in the degrees the words *Cui in vita*, &c. are put in the end; but if in the *Post*, in the middle; and therefore if the writ be, *Post dimissionem quam*, &c. *vir ipsius B. indefecit cui ipsa*, &c. the writ shall abate; for the words relate to the next antecedent. 16 Ed. 3. Brief 652.

11 Aff. 11.
Br. Aff. 167.
16 H. 7. 8, 9.
4 Ed. 3. 3.
39 H. 6. 38,
&c.

And if the husband and wife purchase jointly, and the husband alien all in fee and die, the wife shall have a writ in this form (a):

Which she claims to be her right of the gift of I. who thereof enfeoffed her the said B. and the aforesaid C. some time her husband, and into which, &c.

And if she have an estate to her and the heirs of (b) her body, and of the body of her husband begotten, then the writ is; *which she claims to hold to her and the heirs of her body, and of the body of the aforesaid D. some time her husband, issuing, of the demise of I. Or thus, which he claims to be her right of the demise which I. thereof made to the same B. and the aforesaid D. some time her husband, and to the heirs of her the said B. And there the husband shall have a joint estate with the wife for the term of her life.*

And if the wife claim the lands in dower, then the writ shall be:

Which he claims to be her dower (c) of the gift of D. her first husband, or second husband, and into which, &c. but by the said C. the second husband of her the said B. or the third husband, &c. who demised it to him, &c.

And if she hold for term of life by demise, then the writ shall be,

Which she claims to hold for her life of the demise which I. thereof made to the same B. and to the aforesaid D. some time her husband, for the life of them the said B. and D.

And if the husband and wife lose by default the wife's lands, after the death of the husband she shall have a *cui in vita* to recover those lands so lost by default; but if a man recover by a *cessavit* lands of the wife by default of the husband, and the wife upon a *cesser*, during the marriage had betwixt them; if the husband dieth, the wife shall not have a *cui in vita* upon that recovery; *quod vide Trin. 4 Ed. 2.*

Note; The Statute of West. 2. c. 3. extends to give this account, as well for recovery before the statute, as after. 5 Ed. 2. Cui in vita 23.

2 Ed. 4. 13.
4 Ed. 2. Cui in vita 22.
20 H. 6. 28.
11 Ed. 3.
Brief 477.
Note the case of West.
9 Ed. 4. 16.
11 Ed. 3. 9.
26 Ed. 3. Cui in vita 2.

(a) If the writ suppose *Ex Dono A.* and B. it is a good plea, that A. did not give. 4 Ed. 2. Brief 795. 16 H. 7. 9

(b) 48 Ed. 3. 8. 16 H. 7. 8. 4 Ed. 2. Brief 795, contr. 22 Ed. 45. And Note the writ shall be in the same form, tho'

he be tenant after possibility, and not, *quod clamat tenere* for his life, *de dono*, &c. 18 Ed. 3. 27.

(c) *Ex dimissione I. qui inde feoffavit præd. B.* is good. 18 H. 6. 24.

(1) The point in 42 Edw. 3. 8. & 16. H. 7. 9 was that the writ should abate if the wife should recover of the gift: & if it were omitted the writ should abate. There is no such case as 22. Edw. 45. There is a case of *cui in vita* 22 Edw. 2. 16.

K If the husband and wife, and a third person purchase jointly, and the husband alien all in fee and die, the wife, as it seemeth, shall have a *cui in (d) vita* of a moiety, in the life-time of the third jointenant; but it seemeth such alienation is a severance of the jointure, *quod vide Pas. 36 Ed.*

L 3. under title, *Cui in vita* in the abridgment (1) and if the husband alien the corody in fee, which the wife hath, it shall not be any discontinuance, but the wife may demand her corody.

A If the husband and wife exchange the land of the wife for other lands, if the wife agree unto the exchange, after

B the husband's death, she shall not have a *cui in vita*. And if the wife accept parcel of the land in dower, of which she hath a *cui in vita*, by that acceptance she shall be barred in her *cui in vita* of the residue.

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9 Ed. 4. 16.
If the husband and wife lose by default in waste, no *cui in vita*; the reason is, because no land is in demand in, &c. writ, 36

Ed. 3. She shall have a *cui in vita* of no part during the other's life. 36 Ed. 3. [She shall have a *cui in vita*, that is, of a purchase during the coverture, that he shall not have a *cui in vita* after the death of the others; but for, &c. he may.] 10 Ed. 4. 2.

2 Ed. 2. *Cui in vita* 19. 8 Ed. 2. *ibid.* 25.

8 Ed. 2. *Cui in vita* 28. The husband, gave the land of the wife to I. who gave other land to the husband and wife, and to the son of the husband, and to the heirs of him who survived, and that was pleaded by exchange in bar, in a *cui in vita*; and holden in bar. 20 Ed. 3. *cui in vita* 10.

So if she accept a rent where she and her husband make a feoffment. 21 H. 6. 24.

2 Ed. 2. *Cui in vita* 117. 8 Ed. 2. 28. Perk. 58. 4 Co. 5. b. 3 Ed. 3. 12. 10 Ed. 3. *cui*, &c. 32.

B If husband and wife be jointenants before the coverture, and the husband alien all the land, and die, she shall not

19 H. 6. 45.

21 Ed. 2. 9.

17 Aff. 310.

17 Ed. 3. cont.

where acceptance is made, for she is remitted.

(d) *Rex præcipe, &c. quæ clamat tenere ad vitam suam ex dimissione quam I. S. fecit eidem H. the demandant, & prædicto B. her husband, and C. filio prædictor' H. and B. & hæredib. de corpore ipsius B. &c. in quam non habet ingressum, si non per prædict' B. quandam virum ipsius H. qui illam ei dimisit cui ipsam, &c. and held. 1. That he need not allege the esplees but in person of the demandant, and not in C. who does not claim from him. 2. It need not shew that C. is dead, but it shall come in by the shewing of the tenant; whereupon Trewin said, C. is in life, and demanded judgment of*

the writ; but it seems to be only to the action, and that only as to a moiety, *per Shard.* For of a moiety, it is a disseisin to C. but this seems to be doubted; for by *Shard.* it has been seen, that the feme and C. have joined in an assise. 11 Ed. 3. *Cui in vita* 9. See 36 H. 6. Entry congeable 54. 36 Ed. 3. *Cui in vita* 20. where it is said, that the feme shall not have a *cui in vita* living C. because they may join in a writ of right; but *per Moret.* she shall have a *cui in vita* of the whole, and see 35 Aff. 13. If the stranger survives, he may enter into the whole. (2)

have

(1) *Dicto Abrid. Cui in vita. 20.* The passage is as follows: "If a man and wife and a third person purchase jointly and the husband alien the whole and die, his wife shall not have *cui in vita* of no part of it, living the third person, because they may join in a writ of right, but if the third person die she shall have a *cui in vita* of the whole. *per Thorp.* But if it be of a joint purchase upon coverture she shall not have a *cui in vita* but for a moiety - no more. *Non cui in vita dicitur, in a cui vita well debated.*"

(2) The statement of the case from 11 Edw. 3. *Cui in vita* 9. *Dicto Abrid.* is not here fully & correctly made. I refer for particulars to the case itself - and the case cited fully & correctly made. I refer for particulars to the case itself - and the case cited 36 Edw. 3. which is fully copied in note (1) is manifestly inaccurate. The case from *lib. aff.* should be 35 Aff. 13. I should follow the end of the paragraph.

10 Edw. 4. 2.

have a *cui in vita* but for a moiety. But if they be joint purchasors during the coverture, and he alien all the land, and die, his wife shall have a *cui in vita* of the whole land, because that during the coverture as to purchase, they are but one person in law. And the writ of *sur cui in vita* lieth for the heir of the wife, where the husband alieneth all the land in fee; and the writ is such:

Command A. that, &c. he render to B. one messuage with the appurtenances in N. which he claims to be his right and inheritance, and into which, &c. but by C. some time the husband of D. mother of the aforesaid B. whose heir he is, who demised it to him, whom she the said D. in her life-time could not contradict, as he saith; and unless, &c.

And in the *per* and *cui*, thus:

Which he claims, &c. and into which, &c. but by C. to whom D. some time the husband of E. aunt, sister or cousin of the aforesaid P. whose heir he is, &c. demised it to him, whom she the said D. in her life-time, &c.

And in the *post* the writ shall be thus:

But after the demise which I. some time the husband of C. mother of the aforesaid B. and aunt of the aforesaid M. whose heir he is, whom the said C. in her life-time could not contradict, thereof made, as he saith, and whereof he complains, &c. and unless, &c.

And by this writ it appeareth, that the aunt and the niece may join in a writ of *sur cui in vita*, upon an alienation made by the husband, their common ancestor; or upon a recovery had against the husband and wife, who was the common ancestor to them. If the second husband alien the lands of the wife, and [he and his] wife die, the issue of the wife [and] the first husband shall have a *sur cui in vita* against the alienee, although the second husband be living, if he were not entitled to be tenant by the curtesy; but if the second husband be intitled to be tenant by the curtesy, then the issue of the first husband shall not have a *sur cui in vita* during the life of the second husband. * (1)

And a *sur cui in vita* was maintainable of a rent, *M. 12 F. Ed. 3.* And in a *cui in vita* the grant or gift alleged in the writ is traversable.

(1) *Quere.* Should not the parts enclosed in brackets be struck out and the word "the" be inserted in the first & "by" in the second.

H If a man giveth lands to a woman to marry him, in consequence of which she marrieth him and afterwards the husband alieneth the lands, and dieth, the wife shall have a *cui in vita* of those lands given her by her husband.

8 Ed. 2. *cui in vita* 26. 44 Ed. 1. Fitz. ib. 30. 5 Ed. 3. 37. *cui in vita* 13. 49 Ed. 3. 10. Quere. But 50 Ed. 3. 6. Acc. 5 Ed. 2. *cui in vita* 25.

Writ de fine assensu Capituli.

I THE writ of *fine assensu capit'* lieth, where a dean, bishop, prebendary, abbot, prior, or master of an hospital, alien the lands which they have in the right of their house, abbey or priory, without the assent of their convent, or their chapter or brethren, &c. then the successor shall have this writ, which is such, and may be in the *per, cui, or post*:

K The king to the sheriff, &c. Command A. that, &c. he render to B. bishop of S. one messuage with the appurtenances in N. which he claims to be the right of the church of him the said bishop of Saint Mary of S. and into which the said A. hath not entry but by H. to whom R. some time bishop of S. the predecessor of the aforesaid now bishop demised it, without the assent and will of his chapter, as he saith, &c.

And for a master of an hospital the writ shall be,

The king to the sheriff, &c. Command A. that justly, &c. he render to B. warden of the hospital of Saint Mary Magdalen of Lincoln, one messuage, &c. which he claims to be the right of his hospital aforesaid, and into which the said A. hath not entry but by D. some time warden of the hospital aforesaid, who demised it to him without the assent and will of the brethren and sisters of the same hospital, as he saith; and unless, &c.

And for a prebendary the form of the writ is such:

The king to the sheriff, &c. Command A. that, &c. he render to B. prebendary of the prebend of D. in the church of the blessed Peter of York, one messuage, &c. in A. which he claims to be the right of his prebend, and into which, &c. but after the demise which R. of B. lately prebendary of the prebend aforesaid, predecessor of the said prebendary, without the licence and will of the archbishop of York and the dean and chapter of the church

church aforesaid, thereof made to W. of R. as he saith, and whereof he complains, &c.

And for the prior of Saint John of Jerusalem in England lieth a writ upon an alienation of his predecessor, thus ;

That he render to B. prior of the hospital of Saint John of Jerusalem in England, &c. which he claims to be the right of his church of Saint John of Jerusalem in England, and into which he hath not entry but by W. some time prior of Saint John, &c. predecessor of the aforesaid now prior, who demised it without the assent of the chapter, as he saith ; and unless, &c.

21 H. 6. 9.

And the process in these writs is summons, grand cape and petit cape.

(a) And hereby it appeareth, that a prebendary shall have a writ *de sine assensu capituli* ; by which it seemeth that he hath a fee simple in the prebend ; and yet one prebendary may enter upon the alienation of his predecessor.

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And also a prebendary shall have a *juris utrum* upon an alienation of his predecessor, by which it seemeth he hath not a greater estate than a parson : but yet it seems (b) reasonable that he have this writ *de sine assensu capituli* ; because that he, the bishop, and the chapter are but one body, and are as one body, although the possessions be severed and divided among them ; and every one of them is enabled to bring an action of his own possession in his own name.

And a man may have a writ of *sine assensu capituli* against the same person by several *præcipes* in the writ of lands in several towns, and upon demises of his several predecessors, and it shall be good ; *quod vide H. 33 Ed. 3.*

But if the prebendary, or a bishop, or abbot be disseised and afterwards release to the disseisor ; it seemeth the same is an alienation upon which he may have a writ *de sine assensu capituli* ; for if the disseisor die seised after the release

(a) See the contrary adjudged, *Dyer* 240. for provostship of Wells. See 2 H. 4. 5. *Litt.* 145.

(b) In 3 Ed. 3. a prebend had a writ of entry *sine assensu capituli*, and

the writ was *non habuit ingressum*, from whence it follows, it is a lay fee ; and how the writ shall be, see *Statbam tit. Prebend. case 2.*

made,

made, the successor hath not any remedy but by this writ, or by a writ of right; but if the disseisor die not seised, then it seemeth the successor may enter upon the disseisor, notwithstanding the release of his predecessor, for by the release no more passeth than he may rightfully release, &c.

Writ of Assise of Mortdaunceflor.

C **T**HE writ of mortdaunceflor lieth, where my father or mother, brother or sister, (c) uncle or aunt, or nephew or niece, die seised of any lands, tenements or rents, or of a corody or other rents, as hens or capons, issuing out of other lands of an estate in fee-simple; now if a stranger after their deaths abate in that land, rent or profit, I who am his heir shall have this writ of assise of mortdaunceflor.

D And if the ancestor were seised, the day that he died, of any land or rents, or other like things, of an estate in fee-simple, although that a stranger enter and disseise him of that land or rents the day that he dieth, so that he dieth not seised of the said land or rents, &c. yet I who am his heir shall have that assise of mortdaunceflor, because the writ doth not suppose that my ancestor died seised; but the writ saith, *Ready to take cognisance upon oath, whether W. the father, &c. was seised in his demesne as of fee, on the day when he died, &c.* And this is sufficient although he die not seised; and the form of the writ is such:

E *The king to the sheriff of S. greeting: If A. shall make you secure, &c. then summon, &c. twelve free and lawful men of the neighbourhood of N. that they be before our justices at the first assise, when they shall come into those parts, or before our justices at Westminster on the octave of, &c. or before our beloved and faithful D. and E. and those whom we have associated unto them, at a certain day and place, whereof they the said D. and E. shall give you notice ready to recognize by oath, if W. father of the aforesaid A. or mother, sister, brother, uncle or aunt,*

(c) And not colinage, for such writ will abate, if of the seisin of the uncle.

10 Ed. 2.

Formedon 55.

Plow. Com.

239. If a man

hath issue a son,

and his wife di-

eth; and he

taketh another

wife, and hath

issue a son, and

lands are given

to him and his

second wife in

special tail; be-

fore the Statute

de donis, if the stranger had abated, no mortdauncestor lieth. ⁽¹⁾

was seised in his (or her) demesne as of fee, of one messuage and one yard-land with the appurtenances in N. the day whereon he died, and if he died after the coronation of Lord King Henry; (a) and if the same A. be his next heir: and in the mean time let them view the said messuage and land, and cause their names to be put in the writ, and summon by good summoners B. who now holds the aforesaid messuage and lands, that he may be there to hear that recognizance; and have there the summoners and this writ. *Wiines, &c.*

And upon this writ he need not have any special patent, ^F for the general patent made to the justices shall serve for it, and if the writ be, *that he be before our beloved and faithful D. and E. and those whom we have associated unto them*, then they use to have a special patent directed to the same justices, &c. But if the justices be the justices of assise in the same county, then their general patent shall serve for that assise, as well as if they had a special patent; and the special patent is such:

The king to his beloved and faithful D. and E. greeting: Know ye, that we have constituted you our justices, together with those whom we have associated unto you, to take the assise of mortdauncestor which A. hath arraigned before you by our writ, of one messuage and one yard-land in N. and therefore, &c. as in the patent of assise of novel disseisin.

30 Ass. 24. Br.

Attaint 72. 50

Ass. 4. Br. At-

taint 84.

And a man may have an assise of mortdauncestor of ^G several rents against several persons in several counties, and in the end of the writ shall be several summons against the tenants; and the form of the writ is such:

(a) See that in a *mortdauncestor* by an infant, of the seisin of his father or mother, the writ shall be good, though those words are omitted; *contra* in a writ of *Ayle* 13 H. 4. 17. *Westm.*

1. c. 32. 30 Ass. 25. and see where these three articles are to be inquired, viz. 1. If the tenant pleads to the writ and vouches, and on such dilatory they are at an issue, and found

against all, yet the points of the writ are to be inquired, *et si petens deficit in uno cadit in omnibus*. 2. It seems, if the dying seised be denied, yet the other points shall be inquired, for this is no plea in bar. 3. If a bar be pleaded, and found for the plaintiff, there the points of the writ shall not be inquired. 17 Ed. 3. 28. 39 Ass. 13. 9. Ass. 3. 8 Ass. 17. *Dyer* 311.

The

(1) In *Phewden* 239 it is said "And the heir should have had an assise of mortdauncestor before this Statute against an abator in all cases after the death of such tenant of a fee simple conditional" And the authority in 10 Ed. 2. *Fitz. Formedon* 55. confirms it.

The king to the sheriff, &c. If A. and B. shall make you secure, then summon twelve free, &c. ready to recognize by oath, if W. father of the aforesaid A. and grandfather of the aforesaid B. was seised, &c. of ten shillings rent with the appurtenances in N. and if he died, &c. and if they the said A. and B. are next, &c. and in the mean time let them view the tenement from whence the rent cometh, and cause their names, &c. and summon by good summoners S. who deforceth them of six shillings of the rent, and T. who deforceth them of four shillings of the rent, that they may be then there, &c. 13 H. 4. 17.

And by this writ it appeareth, that the aunt and the niece shall join in assise of mortdauncestor, and that is by the statute of Gloucester, cap. 6.

H (a) And if the heir who bringeth assise be within age, he shall not find pledges; and therefore the form of the writ shall be different, and shall not say, *If A. shall make you*, &c. but thus.

The king to the sheriff, &c. summon, &c. twelve free and lawful, men, &c. if W. father of the aforesaid A. who is under age, as he saith, was seised, &c. and it shall not be said in the writ, and if he died after the coronation, &c. because it appeareth by the age of the demandant; but if many sisters be demandants, and some of them be within age, and some of full age, then the writ shall be in the common form as if all were of full age (b).

If a man go beyond the sea in pilgrimage, and die there, his heir shall have a writ of mortdauncestor of another form, thus :

[196]

The king to the sheriff, &c. If A. shall make you secure, &c. summon twelve, &c. if W. father of the aforesaid A. was seised in his demesne, &c. of the rent of one clove with the appurtenances in N. the day he took (c) his pilgrimage towards the holy

(a) Note; A bill of privilege is not *si fecerit te securum*, &c. and yet the demandant shall find pledges to prosecute, or else it is error. Dyer 288. See 4 Inst. 150.

(b) 13 Ed. 3. pl. 677. 9 Ed. 2. Brief 852.

(c) And in such case, if the writ be in common form, it shall abate, 9 Ed. 2. Mortdauncestor 852. but a writ of ayle or cosnage shall be general in such case, 13 Ed. 3. Brief

land, or towards Jerusalem, or towards Saint James, in which journey he died, as it is said, and if he took that journey after the coronation of, &c.

Post. 211. G.

3 Ed. 4. 3.

9 H. 5. 9.

And in that writ it sufficeth, if he were seised the day he left the land, and embarked although it was not the day of his death. And if the father enter into religion, and be professed, the son shall have a mortdauncestor, if a stranger abate in the land; and the writ shall be, *si W. pater, &c. die quo habitum religionis assumpsit, in quo habitu professus fuit, ut dicitur; & si habitum illum assumpsit post coronationem, &c.*

If a man have a corody to him and his heirs, if he die seised, or were seised thereof the day of his death, his heir shall have an assise of mortdauncestor thereof, if it be taken from him; and the writ shall be,

The king to the sheriff, &c. If W. shall make you secure, &c. then summon, &c. twelve free, &c. of the venue of the city of Westminster, that they be, &c. ready, &c. if L. mother of the aforesaid W. was seised in her demesne as of fee of forty shillings rent, and of the rent of sixty-two loaves, three flagons of wine, twenty flagons of ale and thirty messes of meat, with the appurtenances in the city of Westminster, the day whereon he died; and if he died, &c. and if the said W. &c. and in the mean time let them view the tenement from whence the rent cometh, and summon, &c. T. abbot of Westminster, and friar R. of B. and friar K. of S. monks of the said abbot, who desorce him of the rent aforesaid, that they may be then there, &c.

And the order to set the parcels in the writ shall be as in a writ of right.

And a man shall have a certificate upon this writ, and also writs of association, and *si non omnes*, as he shall have in assise of novel disseisin.

And by the statute of Gloucester, c. 3. if tenant by the curtesy alien his wife's inheritance, and die, the heir of the wife shall have an assise of mortdauncestor, if he have not assets by descent by the tenant by the curtesy, and the same shall be as well where the wife was not seised of the land the day of her death, as where she was seised thereof, for that writ is given by the statute.

If

F If the lord have the ward of the heir of his tenant, and when he cometh of full age the guardian will not suffer him to enter into the land, the heir shall have an assise of mortdaunceſtor against the guardian, by the statute of *Marlebridge cap. 16.*

G And the process in mortdaunceſtor is summons against the party, and if he make default at the day of the assise returned, then the plaintiff ought to sue a resummons; and if he make default again, the assise shall be taken by his default.

8 Aff. 13. Br. Default and Ap-
purtenance 88.

(a) And if a man vouch in assise of mortdaunceſtor, and at the first day the vouchee make default, then the resummons shall issue forth against him: and so if the (b) tenant or vouchee at the first day be essoined; and afterwards at the day given by the essoin, the tenant or vouchee make default, a resummons shall be awarded. But if the tenant at first day be essoined, as in the king's service, and afterwards make default at another day, the assise shall be taken by his default, &c.

H And if the writ of mortdaunceſtor be brought by several summons against several tenants, then the assise may be taken one against one tenant, and another against the other tenant; *quod vide 3 Ed. 3. Itin. North.*

I (c) And a mortdaunceſtor lieth not for lands devisable by will, because the title may fall to another, who is not heir by the will of the ancestor, &c. and yet the writ is true, that he was seised the day he died; *quod vide 23 Ed. 3. Lib. Ass.*

K And if a man be seised in tail, the remainder to his right heirs, and afterwards he die seised without issue of his body, and a stranger abate, it is a question if the heir shall

33 Ed. 3 Mort-
daunceſtor 33.
H. 3. mortdaun-
ceſtor 51.
7 H. 4. 23.

(a) Where the tenant vouched a foreigner, in order to remove the plea, and the vouchee was returned summoned, and made default, the parol was remanded. 3 Aff. 10. 28 Aff. 29.

(b) The tenant was essoined at the day and afterward made default, no resummons was, but the jury taken

by default. 10 Ed. 3. 7. 45 Ed. 3. 23. 4 H. 6. 23. 18 Ed. 4. 8. Note; It was a common essoin, yet see 8 Aff. 13. a resummons granted, and see 22 Aff. 79.

(c) Rot. Parl. 21 Ed. 3. n. 47. a petition inde. 22 Aff. 78. for land in Burgo de Scarborough. 35 Aff. 1. 40 Aff. 2.

Writ of Assise of Mortdaunceſtor.

have an aſſiſe of mortdaunceſtor. And *anno 21 Ed. 3. Itin. Suff. M. 5 H. 4.* the opinion of ſome is, that if the remainder be to his right heirs, then he ſhall not have an aſſiſe of mortdaunceſtor: but if a gift in tail be made unto one, the remainder to him and his right heirs, that then he ſhall have an aſſiſe of mortdaunceſtor, becauſe he hath the remainder in fee to him and his heirs: but it ſeemeth he ſhall not have an aſſiſe of mortdaunceſtor in either caſe; for the words of the writ are, *If W. father of, &c. was ſeiſed in his demefne as of fee the day wherein he died,* and that he was not, for he was ſeiſed in demefne *as of fee-tail*, and not in demefne as of fee, and therefore the jury cannot find that he was ſeiſed in his demefne as of fee, for of the demefne he was ſeiſed in tail. *Quere* of that.

10 Ed. 3.
Darrein Pre-
ſentment 13.

And if the anceſtor die ſeiſed, and have two ſiſters his L heirs, one of them ſhall not have aſſiſe of mortdaunceſtor againſt the other, for this writ lieth againſt ſtrangers, and not againſt privies in blood.

And ſo in gavelkind, one brother ſhall not have a mortdaunceſtor againſt the other for the privy of blood, but he ought to ſue a *nuper obiit* againſt his brother; ſo of one ſiſter againſt the other, &c.

And in 13 H. 3. *Itin. Suff.* the youngeſt brother had a mortdaunceſtor againſt a ſtranger, and recovered where the eldeſt went beyond ſea, although he were not dead, becauſe eighteen years paſſed ſince the eldeſt went beyond the ſeas.

(a) And in 13 Ed. 1. it was adjudged accordingly, where the younger brother recovered in aſſiſe of mortdaunceſtor, where the eldeſt went beyond the ſea, and was alive.

(a) If my younger brother enters him, nor any other action but entry, after the death of my father, I ſhall and if he diſturb me, I may have an (not) have a mortdaunceſtor againſt aſſiſe. *Plow. 309. N. B. 109.*

Writ of Nuper obiit.

A **W**HERE the grand father, father, brother, uncle or other ancestors of the demandant die seised of lands, tenements or rents of an estate in fee simple, and after their death, one of the heirs of the same ancestor enters and deforces the demandants; now he, or those who are so disseised, shall have this writ, against the (c) coparcener: and this writ lieth for one coheir against the others, or for divers coheirs against many, as the case is, and it ought to be where the common ancestor dieth seised of land, &c. of an estate in fee simple; for if one sister deforce another sister of land, whereof their ancestor died seised of an estate in tail, her sister shall have a form-don against the sister who deforced her, &c. and not a *nuper obiit*. And the form of the writ is such: 7 Ed. 3. 15.

B *The king to the sheriff, &c. If A. and B. shall make you secure, &c. then summon, &c. C. that he be before our justices at Westminster such a day, &c. to shew wherefore she deforceth the aforesaid A. and B. (a) of their proportionable part which falleth to them of the inheritance which was W.'s of N. the father, mother, or other ancestor of the aforesaid A. B. and C. whose heirs they are, and who lately died, as it is said, &c. and have there the summoners and this writ, &c. Witness, &c.*

And the writ may be brought by an aunt against her sister and her niece; and then the writ shall be such:

The king to the sheriff, &c. If A. and B. his wife, shall make you secure, &c. then summon, &c. C. and D. that they be, &c. to shew wherefore they deforce the aforesaid A. and B. of the proportionable part of her the said B. which falleth to her of the

(b) And it seems, that every parcener ought to be named in the writ, viz. tenant or demandant. *Trin.* 16 Ed. 3.

(c) And she shall have judgment to hold in severalty. 21 R. 2. *Judgment* 227.

(a) And therefore, if the demandant is seised of part of the lands descended, although they lie in another, town, &c. the writ shall abate. 4 Ed. 2. *Age* 117.

inheritance which was E.'s in N. mother of the aforesaid B. and C. and grandmother of the aforesaid D. whose heirs they are, and who lately died, as it is said: and have, &c.

Dr. Entry conceiv-
able 122. collects,
that the stran-
ger gains nothing
of the freehold by
that entry; quod
nota.
7 H. 6. 8.

And this writ lieth betwixt coheirs in gavelkind, as well C
as between women who are coparceners; and if one coparcener be deforced by another coparcener and a stranger, she shall have a *nuper obiit* against the coparcener; joint-tenure shall not abate the writ, by the rule in the Register.

And also by the rule in the Register, in a *nuper obiit* non- D
tenure of parcel of the thing demanded shall not abate the writ.

(b) And if two of the coparceners enter after the death E
of their ancestor, and deforce the third sister, and afterwards make partition betwixt them, and then one of the two alieneth her part unto a stranger in fee, yet the third shall have a *nuper obiit* against her two sisters notwithstanding that alienation, and shall recover the third part thereof, whereof the coparcener who aliened not was seised, &c.

And to recover the third part of the other coparcener, which is in the hand of the stranger, she ought to sue an assise of (c) mortdaunceffor in her name, and in the name of her other coparceners, &c. or a writ of aiel, as the case is.

16 H. 7. 1.
per Keble, by the
disclaimer the
demandant is
put to his assise
of mortdaunceffor;
also he is
barred of his da-
mages in the
nuper obiit.

(d) And if one coparcener enfeof a stranger in fee, F
and take back an estate to him in fee, or for life, yet it seems a *nuper obiit* lies against him by the other coparcener, if he do not disclaim in blood, *M. 2 Ed. 2.* and it seems reasonable. But *M. 21 Ed. 3.* and *M. 45 Ed. 3. 7 H. 6. 8.* it is holden the contrary: but several tenancy or non-tenure is no good plea in a *nuper obiit* for the privity of

(b) Neither non tenure nor several
tenancy are pleas in a *nuper obiit*. 7 H.
6. 8.

(c) A. and B. bring a *nuper obiit*
against C. D. and E. A. does not ap-
pear; C. and D. appear by attorney,
and E. appears in person, and says,
that he is the villain of I. S. And by

Wilby and others, this shall abate the
writ, and the plaintiff shall be put to
his *Mortdaunceffor* against I. S. and the
others. 18 Ed. 3. 55. accordant. 15
Ed. 3. Brief 322.

(d) 11 H. 4. 23. 21 Ed. 3. *nuper*
obiit 14. 21 Ed. 3. 32. 45 Ed. 3. 19. 30
Ed. 1. *nuper obiit* 18.

blood;

blood; but if he claim by purchase, or disclaim in the blood, it is a good plea.

G And a *nuper obiit* lieth betwixt sisters of the half-blood.

H And if a *nuper obiit* be brought of the seisin of the grandfather, darrein seisin in the father is no plea, without alleging a dying seised in the father, &c.

I A *nuper obiit* lieth of the seisin of the great grandfather.

K And the *nuper obiit* ought to be brought by that coparcener who is deforced, &c. against all the other coparceners, although that some of them have nothing in the tenancy.

L And it appeareth, *T. 4 Ed. 2.* that the *nuper obiit* lieth of the seisin of his father, if the father were seised the day that he died, or the day before, for that amounteth to a dying seised, &c. 4 Ed. 2. *nuper obiit* 10.

M And if one sister hath issue a son, and dieth, and the son doth enfeof a woman in fee of all the land, and afterwards marries her, the *nuper obiit* doth not lie by the other coparcener against the husband and wife; but there she may bring a mortdauncestor in her own name, and in the name of the husband against the husband and wife. *Anno 18 Ed. 2. Itiner. Canc.* 8 Ed. 2. *nuper obiit* 13.

N A villain and his wife shall not have a *nuper obiit* against his wife's coparcener, because he is not enfranchised by the marriage of one of the coparceners which was one of his lords, to whom he was villain before. 16 H. 3. 5. *nuper obiit* 17.

O And if the father give lands in frank-marriage to the one sister, and die seised in fee of other lands, she shall not have a *nuper obiit* against her sister for the lands in fee-simple, unless she will put the lands which were given in marriage in hotchpot, &c.

P A *nuper obiit* lieth of a corody.

Q Neither voucher, nor view, lie in the *nuper obiit*.

R And the aunt and the niece shall join in a *nuper obiit* against the other sister or niece, &c.

Writ of Quare ejecit infra Terminum.

WHERE a man leaseth lands unto another for years, S
and after entereth and maketh a feoffment in fee of
the same lands to a stranger, or for life; the lessee shall
have this writ *Quare ejecit infra Terminum* against the
feoffee or lessee for life.

21 H. 6. 6.
If the term ex-
pire pending the
writ, yet the writ
shall not abate.

[198]

And in this writ he shall recover his term and his damages. T
also, if the term be not ended; and if the term be ended, he
shall recover all in damages.

And the process in it is summons, attachment and dis- U
tress infinite, and not process of outlawry, because the writ
is not *vi & armis*; and the form of the writ appeareth
after, &c.

But this writ of *Quare ejecit infra Terminum* was devised A
(as it is said) by a wise man called *William Merton*, and
for this cause: if a man lease lands for years, and after
oust his lessee, and after he hath put him out, he make a
feoffment of the land unto a stranger in fee; now the
lessee cannot have a writ of *Ejectione firme* against him
who is the feoffee, because he did not put him out, so that
in that case the lessee had no other remedy but to enter
again into the land. And if the feoffee then put him
out, the lessee might have against him an *Ejectione firme vi*
& armis for the wrong done him; but before entry made
by the lessee, he had not remedy against the feoffee: and
therefore by the equity of the statute of *West. 2. c. 24.* (as
often as hereafter it shall happen in the chancery, that in
one case a writ is found, and in the like case falling under
the same law, and wanting the same remedy, &c. let the
clerks of chancery agree, &c.) and by reason of that statute
was this writ devised.

21 Ed. 4. 10.
30. 1 H. 5. 4.
acc.

But yet if the lessor put out the lessee, and presently make B
a feoffment in fee, so as the feoffee be party or privy to the
ouster of the lessee, then the lessee shall have a writ of *Ejec-*
tione firme vi & armis against the feoffee, because he is
party to the ouster, and to the wrong done unto him; and
the writ followeth:

The king to the sberiff, &c. If A. shall make you secure, &c. then summon B. that he be, &c. to shew wherefore he deforceth the aforesaid A. of one messuage with the appurtenances in N. which C. demised to him for a term which is not yet passed, within which term the same C. sold that messuage to the aforesaid B. by reason of which sale he the said B. hath ejected the aforesaid A. from the messuage aforesaid, as it is said: and have, &c.

C And the like writ lieth where the son and heir of the lessor maketh a feoffment, &c. and the feoffee ousteth the lessee.

D And if the lessee granteth over his term, and afterwards the lessor maketh a feoffment of the land unto a stranger in fee; now the second lessee shall have this writ, &c. and the writ shall be,

Wherefore he deforceth the aforesaid B. of one messuage, &c. which R. (to whom L. demised it for a term which is not yet passed) demised to the same B. for the same term, within which term he the said L. sold that messuage, &c.

And so if four let a house to A. for years, who granteth over his estate to B. and afterwards two of the lessors die, and the survivors make a feoffment unto C. in fee, B. shall have a *Quare ejecit infra Terminum* against the said feoffee, and the writ shall recite the special matter.

E And if a man lease land for years, and a lessor suffer a recovery to be against him upon a feigned title, and the recoverer enter, yet it seemeth the lessee shall have this writ of *Quare ejecit infra Terminum*, &c. And the words of the writ are, *by reason of which sale*; and yet the same is not properly a sale, but those words are but of form. But before the statute of 21 H. 8. c. 15. it seemeth that the tenant for years could not have falsified the recovery had against his lessor.

F And if a man lease lands for a term of years, and afterwards die without heir, and the lord by escheat enter and put out the termor, it is a doubt whether he shall have a *Quare ejecit infra Terminum* against the lord by escheat; but it seemeth reasonable that he should have it.

35 H. 8. 52.
4c.
36 H. 8. 63.
T. H. 8. fol. 74. v.
5 H. 7. 7. 37.
11 H. 6. 7.
Babbington.

G And so if the villain lease lands for years, and after the lord of the villain enter, and put out the termor, the lessee

O 4

shall

(1) No cases are printed of 25 & 36 H. 8. - & 5 H. 7. 7. 37 is not in print. And 11 H. 6. 7 (8) does not allude to this particular point -

shall have this writ. And so if a man lease lands for years, and afterwards a stranger put out the lessee, and disseised the lessor, and afterwards the lessor release unto him, it seemeth the lessee shall have the writ *Quare ejecit infra Terminum* against the disseisor, &c.

21 Ed. 4. 30.

contr.

46 Ed. 3. 4.

contr.

18 Ed. 2. pl. 7.

21 Ed. 4. 30.

Quare ejecit

infra terminum

Edw. 2. to the

point in H.

And *Quare ejecit infra Terminum* lieth as well against the I lessor, as against his feoffee; *quod vide H. 19 H. 6.*⁽¹⁾

And it seemeth that the sale supposed in the writ is not K traversable, but only the ejectment, &c. And if so, then it seemeth the writ lieth against the lord by escheat, or against the lord of the villain who putteth out the termor, &c.

But an *Ejectione firmæ* lieth against the lord of the villain, if he put the termor out of his lease made by his villain, before entry made by the lord into the land. And so an *Ejectione firmæ* lieth against the lord by escheat, if he oust the termor of the lease made by the tenant, &c.

Ant. F.

*But quare and
see if the case
support the doc-
trine. See also
con.*

And by the book of 19 H. 6. it appeareth that it is in the election of the lessee to sue a writ of *Ejectione firmæ*, or a writ of *Quare ejecit infra Terminum* against the lessor or his heir, or against the lord by escheat, or against the lord of the villain, if they put the termor out of his term, &c.

Writ of Ex gravi Querelâ.

1 Inst. 111. a.

Note, that if a town hath paid 15, it is no ancient town that may devise, Per 40 Aff. 41. 39 Aff. Br. Aff. 355. This writ is not incident to lands devisable. Quare, If a devise of a rent out of the land devisable be within the benefit of this writ. 29 H. 8. &c. or 5, and 4 & 5 Mar. Dyer 140.

WHERE a man is seised of any lands or tene- L ments in any city or borough, or in gavelkind; which lands are devisable by will time out of mind, &c. now if one who had lands or tenements there, devise those lands or tenements unto another in fee-simple or in fee-tail, he to whom the devise is made shall have (a) this writ of *Ex gravi Querelâ* to execute that devise.

(a) And it seems, that this writ although by custom, the land be devisable. 39 Aff. 6. See contra 40 Aff. 41.

And

(1) *21 Ed. 4. 30. Quare ejecit infra terminum* 1. 2. cites. 19 H. 6. 56. - It seems questionable if this case supports the doctrine in the text - for the court seem to think that the action properly lies against the feoffee - and in 27 Edw. 4. 30 (cited in the margin) the court held that the writ lay against the feoffee not against the lessor - I do not find any authority to the purpose in 46 Edw. 3. 4.

M And if a man devise lands or tenements unto one in tail, the remainder over in fee, unto a stranger, if the tenant in tail enter and be seised by force of the entail, and afterwards die without issue, he in the remainder shall have such writ of *Ex gravi Querelâ* to execute this devise. Post. 200. b.

A And so if a man devise lands or tenements unto one in tail, and afterwards the tenant in tail die without issue of his body; the heir of the donor, or he who hath the reversion of the land, shall have the writ of *ex gravi querelâ* in the nature of a formedon in the reverter, to recontinue the possession of the land to him who hath the reversion. [199]

B And first for land devised in tail within the city of London; the form of the writ for the heirs of the devisee in tail, is such :

The king to the mayor and sheriffs of London, greeting: we have received information by the grievous complaint of I. daughter of E. and M. sister of the same I. that whereas according to the custom hitherto obtained and used in the same city, it is lawful for every citizen of the same city to devise his tenements in the same city by his testament, as he may his chattels by his last will, to whomsoever he will; and S. some time a citizen of the city aforesaid, by his testament and last will devised four shops with the appurtenances, being in the same city, or four messuages and ten shops with the appurtenances, &c. to E. to have the same to him and the heirs of his body issuing R. and S. his wife, of two messuages and three shops thereof, and F. of three shops thereof unjustly deforce the aforesaid I. and M. the daughters and heir of the said E. to the great expence and grievance of them the said I. and M. and contrary to the will of testator aforesaid and against the custom aforesaid; and because we will not have them the said I. and M. to be injured in this matter, we command you, that having called before you the parties aforesaid, and heard their several reasons, and having inspected the tenor of the will aforesaid, you cause to be done to the same I. and M. full and speedy justice thereupon, as of right and according to the custom aforesaid ought to be done, and hath hitherto in the like case been accustomed to be done, or cause to be done to the same I. and M. in this behalf due, speedy and complete justice, as, &c. Witness, &c.

40 Aff. 41.
Br. Castium
38.

Locus imperfectus: See the next writ.

And

And it appeareth by this writ, that the king command- C
 eth them to do according to the custom of the city, or to
 do justice to the parties, by which it seemeth, that the may-
 or upon this writ shall award process to summon the par-
 ty, who is tenant of the land, to appear at a certain day to
 answer to the plaintiff, in the nature of a summons in a
Præcipe quod reddat: and when he cometh, the plaintiff
 ought to shew the testament, and to count upon the same,
 and to allege seisin of the land in the testator, and that he
 devised the same to him; and that the defendant then
 plead thereunto. Or the mayor and sheriffs ought to pro-
 ceed therein according to the usage of the city. And this
 writ may be sued against several tenants; and then the
 mayor ought to make several precepts unto every tenant: D
 and if the land be in another borough, then the writ shall
 be such:

The king to his bailiffs of Great Yarmouth, greeting, &c. E
from the grievous complaint, &c. (as above) that according to
the custom in the said town hitherto, &c. it is lawful for every
burgess of the same town to devise his tenements which he hath
purchased to himself in the same town by his testament and last
will, &c. (as above); and N. a burgess of the same town,
devised one messuage with the appurtenances (which he purchas-
ed to himself in the same town) by his testament and last will, to
W. and his heirs R. of F. entered into the messuage aforesaid
after the death of the aforesaid N. and unjustly deforces the said
W. of it, to the great expence, &c. of him the said W. &c. (as
above) and because we will not, &c. (as above).

Pol. 201.

And if a man deviseth his lands to his wife for life, the F
 remainder over to another in fee, and the tenant for life
 entereth, and is seised by force of the devise and dieth, and
 he in the remainder is deforced, he shall have such writ:

From the grievous complaint, &c. (until) to whomsoever they
will; and M. some time a citizen of the same city, devised to D.
his wife in his testament in his last will, four shops with the ap-
purtenances in I. which he purchased to himself in the same city,
to have the same for the life of her the said D. so that after the
death of the same D. the aforesaid shops with the appurtenances
should remain to the aforesaid E. and his heirs, N. who holds
those

those shops of the demise of the aforesaid D. unjustly deforced the aforesaid E. of them after the death of the same D. to the great expence, &c. of him the said E. &c.

G And if a man devise lands by his testament in tail, the remainder over in tail unto another, and the first tenant in tail enter, and die without issue; and the second tenant in tail enter in his remainder, and die without issue, the heir of the donor shall have a writ of *Ex gravi Querelâ* in this form:

From the grievous complaint, &c. (as above) and I. P. some time a citizen of the city aforesaid, father of the aforesaid S. whose heir he is, demised one messuage with the appurtenances in the suburbs of London, to have the same to M. son of him the I. and to the heirs of the body of him the said M. lawfully to be begotten; so that if the same M. should die without heirs of his body lawfully begotten, the aforesaid messuage, &c. should remain to R. son of the aforesaid I. and the heirs of the body of the aforesaid R. lawfully begotten; L. chaplain of the chauntry at the altar of Saint John in the new work in the church of Saint Paul, London, for the soul of master W. some time of the order of canons of the same church, after the death of the aforesaid M. and R. unjustly deforced the aforesaid S. (of the said messuage aforesaid with the appurtenances) to whom the same messuage with the appurtenances ought to revert, because both M. and R. died without heirs of their bodies lawfully begotten, as it is said, to the great expence &c. of him the said S. &c.

H And it appeareth by the subsequent writ, that when a man maketh a devise of his lands in London, and also of his goods, and maketh executors, &c. in the first place the executors shall prove the same before the ordinary; and after they shall bring the same before the mayor into London, &c. and it shall be there enrolled, and then upon that enrolment the mayor, upon the writ of *Ex gravi Querelâ* sued for the lands, shall do execution, and such process as upon a fine of lands, &c. and the writ is such:

The king to the mayor and sheriffs of London, greeting: whereas, we have received information, that according to the custom in the same city hitherto obtained and approved, testaments in which tenements lying in the said city are devised (proof being first made of the
same

Writ of Ex gravi Querelâ.

same testaments before the ordinary for the goods and chattels devised in the same) ought to be approved and enrolled before you in our hustings of London, for the making execution of the tenements so devised, and now from the relation of R. cousin of I. of P. lately citizen of London, we have received information, that although the aforesaid I. hath devised one shop and two srollers with the appurtenances in the parish of Saint Michael London, in the same city, in his testament in his last will to the aforesaid R. to have and to hold to him and his heirs for ever; and the same will, as the custom is, is proved before the ordinary, yet E. who was the wife of I. of P. and A. executor of the testament of the same I. detain that will in their power, not suffering it to be enrolled in the hustings aforesaid, as before is said, in manifest danger of the disherison of him the said R. and contrary to the custom aforesaid; we being unwilling that the said R. should be injured in this behalf, command you, that having called before you the aforesaid executor, and having heard the reasons as well of the aforesaid R. as of the said executor, you further do in the premisses that which of right and according to the custom of the city aforesaid ought to be done, and hath hitherto in the like case been there accustomed to be done.

And by this writ it appeareth, that if a man have lands devised unto him in London by will, he shall have a writ unto the mayor, to compel the executors to bring in the same to be proved before them in London, and enrolled in the hustings.

And if a man have lands devised unto him in Oxford, A the custom is, that the testament shall be proved there before the ordinary, and afterwards it shall be proved before the mayor of Oxford, &c. And if the mayor will not prove the will, then he to whom the devise is made, and also the executors, who took any advantage of administration by the will, shall have a writ out of the chancery directed unto the mayor and bailiffs, commanding them to prove the will, and thereupon they shall have an *Alias* and a *Pluries*, *vel Causam nobis significes*, &c. and afterwards an attachment against them, if need be, returnable in the king's bench or common pleas.

And

And by the same reason he shall have the like writ against the mayor of *London* to prove such will, and to enrol the same, and upon that an *Alias* and *Pluries* against the mayor of *London*, and attachment, if need be. Post. B.

And by the same reason it seemeth reasonable, that a man shall have a writ directed to the ordinary to prove the will of any man, &c. and the form of the writ is such :

The king to the mayor and bailiffs of the city of Oxford, greeting : we have received the complaint of T. and M. his wife containing, that whereas according to the custom used and hitherto approved in the city aforesaid, the wills of burgeses of the city aforesaid there deceasing, of tenements and possessions, (if they be there devised) ought to be proved first before the ordinary, and secondly before you in the court of the city aforesaid, and in times past have been used so to be ; and the executors of the testament of N. with the aforesaid T. and M. after the will of the said N. was proved before the ordinary of the city aforesaid, (as the custom is) have oftentimes brought it before you to be again proved according to the custom aforesaid, by reason of certain tenements in the suburbs of the same city which the aforesaid N. in his last will hath devised to the same M. as in the said testament is more fully contained ; nevertheless you have hitherto refused and yet unjustly refuse to receive that proof, by which neither the executors aforesaid, nor the said T. and M. can obtain administration upon the tenements aforesaid, or other tenements devised by the aforesaid N. in delay of the execution of the testament aforesaid, and against the will of the aforesaid N. and also to the great damage and grievance of them the said T. and M. and the executors aforesaid : We being unwilling that the said T. and M. and the executors aforesaid should be injured in this behalf, command you, as we have heretofore commanded you, (if it is so) that then you cause to be done to the aforesaid executors and T. and M. full and speedy justice in this behalf, as of right and according to the custom aforesaid ought to be done in the like case, so that repeated complaint thereof may not come to us, or signify to us cause why our commands, &c. Witness, &c.

B. And it is reasonable that it be so done in every other city, where lands are deviseable by will, and are devised by will,

Writ of Ex gravi Querelâ.

will, and the executors and the devisee shall have such actions against the ordinary, and also against the bailiffs of the town and boroughs, to prove such wills.

And in place of a formedon in the descender in tenements devised, is such writ :

And A. some time citizen of, &c. devised to M. his daughter, a certain messuage, &c. to have the same to her and the heirs of her body issuing, T. entered the said messuage after the death of the aforesaid M. and of W. the son and heir of the same M. and bath unjustly deforced L. the brother and heir of the aforesaid W. to his, &c.

But it seemeth, when the tail is one executed by force of the devise in the tenant in tail, or in the tenant for term of life, that then he (a) in the remainder, or the heir of the tenant in tail, shall have a formedon in the descender by the course of the common law, after the statute of *Westm.* 2. according to the common form upon a gift made in tail by deed.

And there is another form of writ in the register in nature of a formedon in the descender. C

[201]

And if a man in *London* devise land unto a woman for A term of her life, and afterwards to her executors to sell, and to convert the money to her own use, by the custom of *London* this testament ought to be proved before the ordinary, and afterwards before the mayor, &c. and to be enrolled, &c. If the testament be proved before the ordinary, B and afterwards one executor detain the same, and will not prove it before the mayor, &c. the other executor shall have a special writ directed unto the mayor and sheriffs of *London*, commanding them to call the executors before them, and to see the testament, &c. and to do right according to the custom of the city, and according to the law, &c. which writ appeareth in the register.

2 & 3 Ma.
Dyer. 10 Co. 41.

And if a man devise lands to his wife for the term of her C life, upon condition that if she marry, the lands shall remain unto her son in tail ; and for default of such issue, the

(a) See 34 Ed. 3 *Formedon* 65. For a formedon in remainder does not lie without alleging esplees in the particular tenant. *Dyer* 140. b.

remain-

remainder to the right heirs of the donor in fee: Now if the wife take a husband who occupieth the lands, and he in the remainder die without heir of his body; the right heir of the donor shall have a special writ of *ex gravi querelâ* directed unto the mayor and sheriffs of London, reciting this special devise and the matter as it is, commanding them to call the parties, and to hear them, and to do right, &c. And by that it appeareth, that he in the remainder shall have advantage of the condition, if it be broken; but the same shall be by way of action, and not by entry by force of the condition not performed, which writ appeareth in the register (b).

Vide Perkins 164. That he in the remainder shall not take benefit of the condition by way of entry.

Writ of Entre ad Terminum qui præteriit.

D WHERE a man leaseth lands or tenements for term of life or years, and afterwards the (a) term expireth, and he to whom the lease was made, or a stranger, entereth upon the lands, and occupieth the same, and deforceth the lessor, the lessor or his heirs shall have this writ.

E And this writ lieth in the *per*, *cui* and *post*: for if the lessee hold over his term, and afterwards make a feoffment, the lessor or his heir may have this writ against the feoffee in the *per*; and if the feoffor make a feoffment over, he may have it against the second feoffee in the *per* and *cui*, and against the third feoffee in the *post*; and the form of the writ is such:

21 Ed. 3. Brief 308. One brought the writ upon a lease by his trespasse.

The king to the sheriff, &c. Command A. that he render to B. one water gulf, &c. into which the same A. hath not entry but by C. to whom the aforesaid B. demised it for a term which is past, &c. and unless he will do it, &c. and the aforesaid B. shall make you secure, &c.

And in the *post* the writ is, and into which the same A. hath not entry but after the demise which the same B. thereof

(b) See 43 Ed. 3. Formedon 68. 4 (a) Viz. By efflux of time or sur-
Ed. 6. 27. 30 Aff. 47. 9 Aff. 17. 8 H. render. Dyer. 178.
8. 32. 1 Inq. 214. b. Litt. 164.

Writ of Entre ad Terminum qui præteriit.

made to D. for a term which is past, and which after that term ought to revert to the aforesaid B. as he saith, and whereof he complains that the aforesaid A. unjustly deforceth him, &c. and unless, &c.

And these words, *unde queritur*, are not inserted in any writ of entry in the *per* and *cui*, but only in a writ of entry in the *post*.

But if a man will bring a writ of entry *ad terminum qui præteriit* of his father, mother or other ancestor, then it is requisite that there should be in the writ the words, *which he claims to be his right and inheritance*; and the form of the writ is such :

The king to the sheriff, &c. Command A. that, &c. he render to B. one messuage with the appurtenances in N. which he claims to be his right and inheritance, and into which the same A. hath not entry but by D. the father (or mother or other ancestor) of the aforesaid B. whose heir he is, who demised it to him for a term which is past, as he says, and unless he will do it, &c.

And in the *per* and *cui*, thus: *which he claims, &c. and into which, &c. but by C. to whom D. (b) the father (or other ancestor) of the aforesaid B. whose heir he is, demised it for a term which is past, &c.* And in the *post* thus: *but after the demise which R. grandfather of the aforesaid B. and C. whose heirs they are, &c. or thus, which C. father of the aforesaid B. and grandfather of the aforesaid S. whose heirs they are, thereof made to H. for that term which is past, and which after that term ought to revert to the aforesaid, &c. as they say, and whereof they complain that the aforesaid A. unjustly deforceth them, &c. unless, &c.*

And in every writ of entry in which a man demandeth of the possession of his ancestor, he ought to have these words in the writ, *which he claims to be his right and inheritance, &c.* but of his own possession he shall not have those words in the writ, but only in a *cui in vita* brought by a woman of her inheritance aliened by her husband, for there she shall have in her writ these words, *which she claims to be his right and inheritance, &c.* but the same is where the

(b) *Consanguineus*; and it appeared by the count that he was great grand-
et. 21 Ed. 3. 52.

saith

woman

woman claimeth an estate in fee-simple by the writ; for if she claim but an estate in tail, or a freehold by her *cui in vitâ*, then the writ of *cui in vitâ* shall make a special mention of that estate, &c.

G If a man lease a manor for life or years, unto which an advowson is appendant, and afterwards the lessee make a feoffment of the manor in fee, and take back an estate of the manor, except the advowson, to him for life; if the lessor bring the writ of entry *ad terminum qui præteriit* of the manor against the lessee, and do not make exception of the advowson, the writ shall abate for non-tenure of the advowson upon the matter shewed, as appeareth by the Register.

H The aunt and the niece may join in this writ of *ad terminum qui præteriit*, as appeareth by a writ before mentioned.

I And if a man make a feoffment in fee upon condition, that if he pay a certain sum of money at a certain day to the feoffee or his heirs, that then he shall have the land again, and that he may enter, if he pay the money at the day, and afterwards the feoffee will not suffer him to enter: the feoffor shall have the writ of *ad terminum qui præteriit*, because that when he payeth the money, the other hath no term in effect; and if he should not have this writ, he could not have any remedy but to enter, &c. and thereupon to have an assise.

33 Aff. 11.
Vide Theolwell
131, 132, 228.
8 Ed. 3. Entre 4.
V. 14 H. 8. 10.
Brook.

5 Edw. 3. 63.
Fitz. Entry 4.

And *M. 5 Ed. 3.* it was adjudged that the plaintiff should recover in such action upon such matter pleaded and shewed; but I do not perceive how the same could be maintained in reason, because the fee-simple is not properly said a term; for then the lord by escheat should have a writ of *ad terminum qui præteriit*, if his tenant dieth without heir, where he cannot have a writ of escheat; and in *ad terminum qui præteriit* the lease alleged in the count is traversable.

[202] .62.

A If the husband and wife lease the wife's lands for years, and the husband dieth, and the termor holdeth over his term, the wife shall have a writ of *ad terminum qui præteriit*, if she will, &c. but she ought to count that she and her husband leased the land, &c.

V. 50 Ed. 3. 17.

Writ of Entre ad Terminum qui præteriit.

And it appeareth in 8 *Ed. 2. Itin. Canc.* that the grantee of the reversion shall have a writ of *ad terminum qui præteriit* against the lessee, or his heir or assignee, and yet there is no such writ in the Register.

Writ of Dum fuit non Compos Mentis.

4 Co. Beverley's
Case. 1 Inst. 247.

WHERE a man, who is not of *sane memory*(a), alieneth his lands or tenements in fee-simple or in fee-tail, for life or for years, if he be afterwards deformed by his alienation or lessee, then he himself shall have this writ against his alienation or lessee notwithstanding his own alienation, or his own lease; and the same appeareth by writs in the Register, which are of such form :

The king to the sheriff, &c. command A. that he render to B. one messuage and twenty acres of land with the appurtenances, which the same B. demised to him, while he was not of sound mind, as he saith, and unless he will do it, &c. Or thus: into which the same A. hath not entry but by C. to whom the aforesaid B. demised it while he was not of sound mind, &c. Or thus in the post: into which the same A. hath not entry, but by the demise which the aforesaid B. while he was not of sound mind, thereof made to D. and whereof he complains, &c.

Litt. 97. con.
39 H. 6. 48.
contra.
3 Aff. pl. 10. con.
9 H. 6. 6.
Britton. Tit.
Debt 66. Bro.
Dum fuit. &c. 5.
9. N. Br. 126.
3 H. 7. 1.
2 Bl. Comm. ch.
19.

And some have said, that this writ lieth not by him, who alieneth the land, because he shall not disable himself, nor contradict his own deed; but that seemeth to be little reason, for this is an infirmity which cometh by the act of God; and it standeth with reason, that a man should shew how he was visited by the act of God with infirmity, by which he lost his memory and discretion for a time; as if an infant within the age of twenty-one years make a feoffment in fee, or a lease for years, he himself shall avoid his feoffment or lease, as well within age as of full age, although he shall not have a *dum fuit infra etatem* within age, because the writ supposeth him to be of full age; but

(a) The issue in tail shall not have a *dum fuit non compos* on the alienation of his ancestor, but a *foimdedon*. 18 *Ed. 3.* 31.

an infant of the age of fourteen years hath discretion, as hath been adjudged, at such age; and if he at such age commit felony, he shall be hanged for the same, and yet his feoffment, lease or grant, shall not bind him before the age of twenty-one years; because he hath not perfect discretion or knowledge what he ought to do, or what is to his profit or disadvantage before such age; and therefore he shall allege, that he was within age at the time of the feoffment, grant or lease made by him; by which it appeareth, that he shall allege, that he had not perfect discretion at that time, for that nonage is an infirmity of nature, and cometh by the act of God; and *a fortiori* then he who is not of *sane memory*, shall allege, that he was not of *sane memory* at the time of his feoffment or grant; for he who is of unsound memory, hath not any manner of discretion; for if he kill a man, it shall not be felony, or murder, nor shall he forfeit his lands or goods for the same, because it appeareth that he hath not discretion; for if he had discretion he should be hanged for the same, as an infant who is of the age of discretion, who committeth murder or felony, shall be hanged for it.

Plow. Com. 19.
a. 21 H. 7. 32.
26 Aff. 27. 5
Ed. 3. con. 24.
contra. 4 Ed. 3.
19. a.

And it appeareth in *Britton*, that in debt upon a bond, the defendant said, he was not of sane memory at the time of making the bond, and holden that it was a good plea.

E And if an idiot release all his right by deed, yet if it be afterwards found by office that he is an idiot, the king shall seize the land, and the release shall not bind, &c. *Quod vide* in title *scire facias*, P. 32 Ed. 3. in the abridgments.

Stanford
Prærog. 34.
50 Aff. 2. con.

(a) But in the book of Assises, anno 35 Ed. 3. the tenant in an assise pleaded the release of the plaintiff, and the plaintiff said, that he was not then of *sane memory*, &c. and there the opinion of two justices was, that he should not have that plea; but I do not much regard their opinion for the reasons aforesaid.

(a) F. *Scire facias* 106. 18 Ed. 3. *ibid.* 10.

Writ of Dum fuit non Compos Mentis.

Dum non compos
mentis was
brought of the
alienation by a
fool, and admit-
ted, 18 Ed. 3.
10. fac. 10. 12
Ed. 4. 6. 39 H.
6. 42.

And it appeareth in 7 *Henry* 4. 5. that a feoffment of an ideot made by letter of attorney is void; and so it seemeth to be of a man of *non sane memory*.

(b) And if a man of *non sane memory* alieneth his land in fee and dieth, his heir shall have such writ, or he may enter, as his ancestors might have entred; as well as if an infant within age had aliened his lands, &c.

And in 25 *Ed.* 3. in the book of assises, a man of *non sane memory* made a feoffment in fee, and took back an estate to himself for life, and there it was agreed and admitted, that the same was a remitter, and (c) thereupon issue was taken, that he was of perfect memory, &c. and that was found by verdict; which see in the title of *feoffments* in the Abridgments.

And the writ for the heir upon the alienation of his ancestor shall be in such form:

The king to the sheriff, &c. Command A. that, &c. he render to B. twenty acres of land with the appurtenances in N. which he claims to be his right and inheritance, and into which the same A. hath not entry but by C. or other ancestor of the aforesaid B. whose heir he is, who demised them to him, while he the same C. was not of sound mind, as he saith, &c.

And thus in the *per* and *cui*:

Which he claims, &c. and into which, &c. but by C. to whom D. the grandfather of the aforesaid B. (or other ancestor of the aforesaid B.) whose heir he is, demised them, while he the same D. was not of sound mind, &c.

Or thus in the *post*:

Which he claims, &c. and into which, &c. but after the demise which C. the great grandfather (or other ancestor of the aforesaid B.) whose heir he is, while he the same C. &c. thereof made, as he saith, and whereof he complains.

And 14 *An.* of the king was such writ granted:

(b) 7 *H.* 4. 5. So that the land shall escheat notwithstanding the feoffment. 4 *Co.* *Beverley's* case.

(c) But Note; The issue found that he was remitted. 25 *Aff.* 4. See

17 *Ed.* 3. 7. or 70. See *Bro. Feoffment de Terr'* 26 *F. Remitter* 23. It is not admitted to be a remitter. * (1)

Command

(1) In *Fitz. Remitter* 23 it is admitted to be a remitter.

- C Command R. that, &c. he render to B. one rent of three loaves of bread, seven flagons of ale, and seven messes of meat by the week, with the appurtenances in C. and which he the same B. demised to him, while he was not of sound mind, as he saith, and unless, &c. And the process is grand cape and petit cape as in other *precipes quod reddat*.

Writ of Intrusion.

E WHERE tenant for life, or in dower, or by the curtesy, (a) dieth seised of such estate for life, and after their death a stranger intrudeth upon the land, he in the reversion shall have this writ against the intruder, and the writ shall be such:

F The king to the sheriff, &c. Command A. that justly, &c. he render to B. one ploughland with the appurtenances in N. which he claims to be his right and inheritance, and into which the same A. hath not entry (b) but by the intrusion which he made into it after the death of C. who was the wife of D. who held it in dower of the gift of the aforesaid D. sometime her husband, the father or brother of the aforesaid B. whose heir he is, as he saith, and unless, &c.

And in the *per* thus:

And into which the same A. hath not entry but by C. who demised it after the death of D. who was the wife of E. who held it in dower, of the gift of the aforesaid E. sometime her husband.

And in the *per* and *cui* thus:

And into which the same A. hath not entry but by C. to whom D. demised it, who intruded himself into it after the death of, &c.

And in the *post* the writ is thus:

(a) And therefore see 24 Ed. 3. 74. It is a good plea to say that he was seised, and gave to him whom he supposes tenant for life, and to the heirs of his body, and for that he died

without heir, he entred *absque hoc*, that he held for life of the lease of the demandant, at the time of his death.

(b) And not in *quas se intrusit*. 6 Ed. 2. Brief 808.

Writ of Intrusion.

Into which the same A. hath not entry but by the intrusion which C. made into it after the death of D. who was the wife of E. who held it in dower of the gift of the aforesaid E. sometime her husband, brother of the aforesaid B. whose heir he is, and which after the death of the aforesaid D. ought to revert to the aforesaid B. as he saith, and whereof he complains, &c. and unless, &c.

And so those words *Et unde queritur* were put in every writ of entry in the *post*.

And if a woman recover dower against him in the re-
version, or against his heir, and afterwards she die seised
of that estate, and a stranger intrude into the land, then he
in the reversion shall have a writ of intrusion. And in the
writ mention shall be made of the recovery thus, *And into
which the same A. hath not entry but by the intrusion which he
made into it, after the death of C. who was the wife of D. who
recovered it in our court, before our justices at W. by our writ,
by the consideration of the same court, as her dower which fell to
her of the freehold, which was of the aforesaid D. sometime her
husband in the same town, against the aforesaid B. or thus:
against W. the father, or other ancestor of the aforesaid B.
whose heir he is, as he saith, and unless, &c.* G

And so he shall have a writ of another form, where
the widow recovereth her dower against the heir of her
husband, and after the heir granteth the reversion unto
the said B. and then the tenant in dower dieth seised, and a
stranger abateth, the said B. shall have a writ of intrusion
against the stranger, and the writ shall rehearse the whole
special matter, which writ appeareth in the Register.

And the aunt and the niece shall join in a writ of intru-
sion, and if the heir assign dower unto his mother, and then
commit felony, for which the lord claimeth the reversion,
and granteth the same to one in fee, to whom the tenant
attorneth, and afterwards the grantee of the reversion have
issue two daughters, and die, and one of them have issue
and die: now the aunt and the niece shall join in that writ,
&c. and the writ shall be such: H

*The king to the sheriff, &c. Command A. that justly, &c. he
render to B. and M. her sister, and to P. and F. his brother,
one messuage, &c. into which the same A. hath not entry but
after*

after the intrusion which H. made into it, after the death of I. who was the wife of W. who held it in dower (of, &c. sometime her husband) of N. father of the aforesaid B. and M. and grandfather of the aforesaid P. and F. whose heir they are, of the assignment of T. chief lord of the fee, of whom the aforesaid I. held it in dower, by reason of felony committed by W. of S. son and heir of the aforesaid W. as it is said; and which after the death of the aforesaid I. ought to revert to the aforesaid B. M. P. and F. by form of the assignment aforesaid, as they say, and whereof they complain, &c.

A And if a man intrude after the death of tenant by the curtesy, the writ of intrusion shall be such: [204]

Command A. that, &c. he render to B. &c. which he claims, &c. and into which the same A. hath not entry but by the intrusion which he made into it, after the death of D. who held it by the law of England after the death of C. sometime his wife, the mother or aunt of the aforesaid B. whose heir he is, &c. as he saith.

And in the per thus:

But by C. who demised it to him, who intruded himself into it, &c.

And in the per and cui thus:

But by C. to whom D. demised it, who intruded himself into it.

And in the post thus:

But after the intrusion which W. made into it after the death of C. who held it by the law of England after the death of D. some time his wife, mother of the aforesaid B. whose heir he is, &c. and which after the death of the aforesaid C. ought to revert to the aforesaid B. as he saith, and whereof he complains, &c. and unless, &c.

B And if a man intrude after the death of tenant for life; then he in the reversion shall have such writ of intrusion.

The king to the sheriff, &c. Command A. that justly, &c. (a) he render to B. &c. into which the same A. hath not entry

(a) But if the writ be founded *suam*. 10 H. 6. 9, yet if it be omitted on the lease of the ancestor, it shall be amended, it is amendable.
be quod clamat esse jus & hereditatem

Writ of Intrusion.

but by the intrusion which he made into it after the death of C. to whom the aforesaid B. or to whom D. the father (or other ancestor) of the said B. whose heir he is, demised it for the life of him the said C. as he saith, and unless, &c.

And in the *per* thus :

And into which the same A. &c. but by C. who demised it to him who intruded himself into it after the death of W. to whom the aforesaid B. or R. father (or other ancestor) of the aforesaid B. whose heir he is, demised it for the life of him the said W. &c.

And in the *per* and *cui* thus :

Into which, &c. but by C. to whom D. demised it, who intruded himself into it, &c.

And in the *post* thus :

But after the intrusion which D. made into it after the death of I. to whom B. the father (or other ancestor) of the aforesaid B. whose heir he is, demised it for the life of him the said I. and which, after the death of him the said I. ought to revert to the aforesaid B. as he saith, and whereof he complains, &c.

And in the Register there are other forms of writs, C where the reversion of the tenant is granted by fine or otherwise, which shall be *ex assignatione*.

And the heir in tail shall not have a writ of intrusion, D for if a man intrude after the death of tenant in dower, or of tenant by the curtesy, or after the death of tenant for life, he in the reversion in tail shall not have a writ of intrusion, but he shall be put to his writ of *formedon*; for that writ lieth for him who hath the reversion in fee-simple, or for term of life, and not for him who hath the reversion in tail or for term of years; for it lieth not but for him who hath a freehold, after the death of tenant for term of life, or of tenant in dower, &c.

And he in the remainder shall have a writ of intrusion, if a man intrude after the death of tenant for life; and so the assignee of the assignee of the remainder shall have such writ.

If lands be given to two, and to the heirs of one of them E and he who hath the fee die, and then the tenant for life die, the heir of him in remainder shall have such writ.

Into

Into which, &c. but by the intrusion which he made into it, after the death of C. who was the wife of D. who held it for her life, of the demise which R. thereof made to her the same C. and the aforesaid D. sometime her husband, and to the heirs of him the said D. father of the aforesaid B. whose heir he is, &c. as he saith, and unless, &c. And the process in this writ is summons, grand cape and petit cape.

Writ of Cui ante Divortium.

F **W**HERE the husband alieneth the wife's land which she had in fee-simple, or in tail, or for life, unto a stranger in fee simple, in fee-tail, or for life; and afterwards the husband and wife are divorced, then the wife shall have this writ against the alienee; and the form of the writ shall be such:

G *The king to the sheriff, &c. Command A. that justly, &c. he render to B. who was the wife of D. one messuage with the appurtenances in N. which she claims to be her right and inheritance, and into which, &c. but by the aforesaid D. sometime the husband of her the said B. who demised it to him, whom she could not oppose before the divorce between them solemnized.*

H And this writ lieth in the *per*, *cui* and *post*, as doth the other writ of *cui in vitâ*.

I And if the husband alien unto an abbot in fee, and afterwards the husband die, the wife shall have a writ of *cui ante divortium*, in the *post*, against the successor of the abbot; and the form of the writ shall be thus:

Into which the same abbot hath not entry, but after the demise which the aforesaid D. sometime the husband of her the said B. (whom she could not oppose before the divorce, &c.) thereof made to L. sometime abbot of B. as she saith, and whereof she complains, &c. And it shall not be said in this writ, predecessor of the said abbot, nor in any case where a religious is tenant.

K And the heir shall have a *sur cui ante divortium*, where the wife dieth before the action brought, as well as he shall have a *sur cui in vitâ*: but of an estate-tail, the heir shall

Writ of Caufâ Matrimonii prælocuti.

not have a *sur cui in vitâ ante divorcium*, but shall be put to his formedon in the descender.

And the aunt and the niece may join in this writ, as they may in a *sur cui in vitâ*; and the process is summons, *grand cape* and *petit cape*.

Writ of Caufâ Matrimonii prælocuti.

[205] **W**HERE a woman giveth lands unto a (a) man in fee-simple, unto the intent that he shall marry her, and afterwards he will not marry within convenient time, when he is required by the woman; then the woman shall have this writ; and the form of the writ is such:

The king to the sheriff, &c. Command A. that justly, &c. he render to B. one messuage, which the same B. demised to him, because of a marriage, before treated of, between them, wherefore he ought to have married her, and hath not yet married her, as she saith, &c.

And in the *per* and *cui* thus:

Into which, &c. but by C. to whom the aforesaid B. demised it, because of a marriage, &c. and hath not married her, as she saith, and whereof she complains, &c.

C. 2. Part 74.

And it seemeth, that this writ lieth for the woman, where she giveth lands to a man for term of his life, with intent that he may marry her, as well as where she giveth it in (b) fee-simple. But if she giveth it to a man in tail to marry her, &c. although he will not marry her, it seemeth she shall not have this writ against him, by this means to avoid and defeat the estate-tail; for that would be contrary to the statute of *donis conditionalibus*. And a man by a gift upon a condition in law shall not make void the statute. For the statute makes a law certain by express

(a) But he shall never have an averment against a deed without plea. 14 Ed. 3. but adjudged *contra* on a writ of error. 12 Ed. 1. *Feoffment* 114. *Vide infra* L. (1).

(b) If it be not by writing. *Dyer* 312. See 14 H. 8. 8. & *infra* K.

(1) This note is obscure. I do not find the case 14 Edw. 3. cited. But the words case 12 Edw. 1. cited *Fitz. Abr. Feoffment*. 114. decided that a woman might aver by plea that a gift by deed was given upon condition *causa matrimonii* & that in that case she pleaded that she had a writing to show the condition, which writing was lost: & it seems to have been held that it was not necessary that the condition should have been in writing. I conjecture that the case cited as 14 Edw. 3. should be B. Edw. 2. *Fitz. Abr. Entry*. 78. & that the doctrine in the note should be thus stated: "But she shall never have an averment against a deed by plea: but adjudged *contra* &c." Indeed note (b) seems properly a part of note (a), & perhaps it should read, "but she shall never have an averment &c. if it be not by writing" i.e. if the condition be not by writing. — Both notes belong at the end of C.

words of gift in tail. And then it is not reason, that it should be aneanted by intendment, or by a thing averrable, which is not expressed, and shall be taken contrary to the statute. And the heir shall have this writ as well as the woman herself; and the writ shall be,

3 & 4 Ma.
Dyer 146.

D Command A. &c. that he render to B. &c. which she claims, and into which he hath not entry but by C. (the mother of the aforesaid B. whose heir she is) who demised it to him, by reason of a marriage, &c. and he hath not married her, &c. and unless, &c.

But if he express an entry if he marry, then he may alien, but till alienation he is seised jure uxoris.

5 Ed. 2. Br.
Cond. 204. (1)

E And it may be in the *per*, *cui* and *post*, as the case is.

F And also the aunt and the niece may join in the writ.

(a) And if a man give lands unto a woman unto the intent to marry him, although the woman will not marry him, &c. he shall not have a writ *causâ matrimonii prælocuti* and although the woman after marry him, yet the woman shall hold the land to her and her heirs, &c. and if the husband afterwards alien them, she shall have a *cui in vitâ* for those lands (b).

G If a woman enfeoff a stranger by deed of land in fee, to the intent to enfeoff her, and one who will be her husband; if the marriage do not take effect, she shall have the writ of *causâ matrimonii prælocuti* against the stranger, notwithstanding that the deed of feoffment be absolute; *quod vide* in title *Affise*, 34 Ed. 3. lib. *Affise*.

5 Ed. 2. 24.
6 H. 4. 1. 8 Ed.
2. Entry 78.
17 Aff. pl. 20.
N. Br. 135.
Post. L.

H A woman enfeoffed a man upon condition that he should take her to wife, and he had a wife at the time of the feoffment, and afterward the woman for not performing the condition, entred again into the land, upon the second feoffee, and her entry was adjudged lawful, and the condition good. *Anno 40 Ed. 3. lib. Aff.*

14 H. 8. 19.
Brudnell. 24 H.
8. 9. It is a good
condition. 30
Aff. 17. Condit.
17. & Br. Con-
dit. 119.

I And the husband and wife may sue the writ of *causâ matrimonii prælocuti* against another who ought to have married her.

K And if a woman make a feoffment in fee by deed, reserving rent, then she shall not have the writ of *causâ ma-*

8 Ed. 2. Entry
78. ac. of a con-
dition expressed. (2)

(a) Dyer 147. (b) 6 Ed. 2. *Cui in vitâ*. 24 H. 6. 1. 6 H. 4. 1. 5 Ed.
2. *Cui in vitâ* 24. N. Br. 135.

(1) This marginal note belongs at the end of paragraph F. & it should be thus.
But if a man enfeoff a woman upon condition that if she marries him, he shall reënter, & he marries her, he may alien, for he has performed the condition: but it seems that after marriage, until he alien, or does some other act, he shall be deemed in *jure uxoris*.
(2) This note should say that the writ does not lie if the deed be a simple deed without any such condition expressed.

trimonii

Note 3 & 4 Ma.
Dy. 146. one
cannot aver a
consideration
against a confi-
deration expres-
sed by deed. Vide
14 Eliz. Dyer
211, 212.

Vide ante nota
(1). *that it is the*
same in the writ
in by writing.

trimonii pralocuti for the rent reserved, because it is proved that the reservation was the cause of the feoffment; but if she have a deed to shew and prove that the feoffment was to the intent that he should marry her, then she shall maintain her action notwithstanding the reservation made of the rent.

And a woman may sue *causa matrimonii pralocuti* without any writing shewed to prove the same, where she maketh a feoffment without deed to a man in fee, to the intent to marry her, &c. and the process is summons, *grand cape* and *petit cape*, &c. L
M

Writ of Entry in Casu proviso.

THE writ of entry in *casu proviso* is given by the statute of Gloucester, cap. 7. and where tenant in dower alieneth in fee, for life or in tail, the land which she holdeth in dower; he who hath the reversion in fee, or in tail, or for life, shall maintain this writ against the alienee; and against him who is the tenant of the freehold, of the land during the life of the tenant in dower, &c. And the writ may be made in the *per*, *cui* and *post*; and the writ shall be such: N

The king to the sheriff, &c. Command A. that, &c. he render to B. &c. which he claims, &c. and into which the said A. &c. but by C. who was the wife of D. who demised it to him, who held it in dower of the gift of the aforesaid D. some time her husband, the father (or other ancestor) of the aforesaid B. whose heir he is, and which after the demise made by her the said C. to the aforesaid A. against the form of the statute thereof provided at Gloucester by the common council of our realm, ought to revert in fee to the aforesaid B. by the form of the same statute, as he saith, and unless, &c.

And in the *per*, thus:

Into which the same A. hath not entry but by C. to whom D. who was the wife of E. demised it, who held it in dower, &c. and which after the demise, &c.

And in the *post*, thus:

Command

Command A. that, &c. he render to B. &c. which he claims, &c. and into which, &c. but after the demise which C. (who was the wife of D. who held it in dower of the gift of the aforesaid D. some time her husband, father of the aforesaid B. whose heir he is) thereof made to F. and which after the demise made by her the said C. &c. (as above, till) ought to revert to the said B. by the form of the same statute, as he saith, and whereof he complains, &c. and unless, &c.

[206]

A And if a woman recover her dower against the heir, and afterwards alien in fee, the heir shall have the writ of *casu proviso*; and in the writ he shall mention the recovery, as he shall do in a writ of entry *ad communem legem*, upon an alienation made by tenant in dower, &c. And although a woman alien in tail, or for life, yet the writ is always of one form.

B If a man grant the reversion of lands which are holden of his inheritance in dower to another, and the tenant attorn, and afterwards the tenant in dower alien in fee, the grantee of the reversion shall have such writ *de assignatione*.

Command A. that, &c. he render to B. &c. and into which, &c. but by C. who was the wife of D. who held it of the aforesaid D. in dower, of the gift of the aforesaid D. some time her husband, of the assignment which W. son and heir of the aforesaid D. thereof made to the aforesaid B. and which after the demise, &c.

And if the heir grant the reversion in fee, and the tenant attorn, and afterwards the grantee grant the same over, and the tenant attorn; and afterwards the tenant in dower alien the fee, the third grantee of the reversion shall have such writ in *casu proviso*.

The king to the sheriff, &c. Command A. that, &c. he render to B. &c. which he claims, &c. and into which, &c. but by, or, after the demise, &c. (as the case is) which C. who was the wife of D. who held it in dower (of the gift of the aforesaid D. some time her husband) of the aforesaid B. of the assignment which E. of whom the aforesaid C. held it in dower of the assignment of F. of whom the same C. held it in dower of the assignment which G. son and heir of the aforesaid D. thereof made

Writ of Entry in consimili Casu.

made to the aforesaid F. thereof made to the aforesaid W. and which after the demise made by her the said C. &c. ought to revert, &c. if the writ be in the *per*.

And if the writ be in the *post*, then the writ shall be, C
And which after the demise by her the said C. ought to revert by form of the statute, &c.

And the aunt and the niece may join in this writ where D
the tenant in dower alieneth in fee, and they have the reversion by descent from their ancestor. And the process is summons, grand cape and petit cape, &c. E

Writ of Entry in consimili Casu.

The writ is not maintainable against tenants in tail, after possibility of issue extinct. Old tenure. 13 Ed. 2. entre congeable 56. 14 Ed. 3. Brief. 283. N. Br. 137. Ant. 198. 3 Ed. 2. Entr. &c. 8 N. 11 Ed. 2. Entry 68.

THERE is another writ of the like nature, which is F
called a writ of entry *in consimili casu*; which lieth where tenant by the curtesy, or for life, or for another's life, alieneth in fee, (a) or in tail, or for life; now he in the reversion, who hath an estate therein for life, or in fee-simple, or (b) in tail, shall have this writ during the life of the tenant for life who aliened: and the writ is not given by the statute of Gloucester, which gave the writ of *in casu proviso*; but it is formed and granted upon the statute of Westminster 2. cap. 24. which wills, *That as often as it shall happen in the chancery, that in one case a writ is found and in the like case falling under the same law and wanting the like remedy is found none; the clerks of the chancery shall agree in making a writ, and that appeareth* H. 3 Ed. 2.

And if tenant by the curtesy alien, he in the rever- G
sion shall have such writ:

Command A. that, &c. he render to B. one messuage, &c. which he claims, &c. and into which, &c. but by C. (who demised it to him) who held it by the law of England after the death of E. some time his wife, the mother, great grand-

(a) But not if he be tenant after possibility, 13 Ed. 3. Entre cong. 56.

(b) So for him who has a fee-tail in reversion, 21 Ed. 3. 11.

See a writ against J. S. in quo non habet ingressum nisi post a lease to him made, &c. 8 Ed. 2. Brief 810. (1)

mother

(1) The point in *Pitt. Brief 810* is as follows. "Consimili casu agit J. supponens quod hec non erat nisi post a lease made to him the said J. which after the alienation of the said J. in fee the Statute ought to revert to the demandant: judge of the writ supponens the demise to have been made to us, & that we aliened to the same writ supponens that we are tenant by judgment of the writ & it is not allowed."

mother or grandmother of the aforesaid B. whose heir he is, and which after the demise thereof made by him the said C. to the aforesaid A. in fee, ought to revert to the aforesaid B. by form of the statute provided in such like case, as he saith, and unless, &c. And in the per and cui thus: and into which, &c. but by C. to whom D. demised it, who held it by the law of England, &c. And in the post, thus: and into which, &c. but after the demise which C. who held it by the law of England, &c. (as above) whose heir he is, thereof made to F. and which after the demise, &c.

And if the tenant for life alien, then he in the reversion shall have a writ in this form:

The king to the sheriff, &c. Command A. that justly, &c. he render to B. one messuage, &c. into which the same A. hath not entry, but by C. to whom the aforesaid B. demised it, for the life of him the said C. and which after the demise by him the said C. to the aforesaid A. thereof made in fee, ought to revert to the aforesaid B. by form of the statute, &c. ut supra.

And Note, by this writ it appeareth, that the writ 38 H. 6. 3. supposeth, that the tenant for life alieneth in fee; and although he grant but for life, or in tail, yet the writ supposeth that he alieneth in fee, &c. but that is not material: for if it be in fee, or in tail, or for life, it is a forfeiture of his estate.

And so in the case, in the writ *in casu proviso*, and in the writ of *entre ad communem legem*, it supposeth the alienation to be made in fee, although it be but for life, or in tail, for that there is no other form: and it may be made in the *per*, *cui* and *post*, and that without title made in the writ, because it is of a lease made by the defendant himself to the tenant that alieneth: but if the father or other ancestor lease for life, and die, and afterwards the tenant for life alien in fee, &c. now the heir who is in the reversion, shall have a writ, which shall comprehend a title in it; and shall be such:

The king to the sheriff, &c. Command A. that, &c. he render to B. one messuage, &c. which he claims, &c. and into which, &c. but by C. and D. his wife, to whom I. the father or mother, (or other ancestor) of the aforesaid B. whose heir
he

he is, demised it for the lives of them the said C. and D. and which after the demise, &c.

And there the writ supposeth, that the wife did demise it, &c. and yet she shall have a *cui in vita* after the death of her husband, to recover the freehold, notwithstanding the alienation made by her husband. And if tenant for life grant his estate unto another, and the grantee alien in fee, &c. then the writ shall be,

Into which the same A. &c. but by C. to whom D. who held it for his life of the demise of the aforesaid B. demised it for the same term, and which after the demise, &c.

And if a man lease lands for term of life, and afterwards die, and his heir grant the reversion to B. and the tenant attorn, and afterwards the lessee for life grant his estate over to one who alieneth to A. in fee, now B. shall have such writ:

Command A. that, &c. he render to B. &c. into which, &c. but by C. (who demised it to him) who held it for the life of D. of the aforesaid B. of the assignment which I. son and heir of R. made thereof to the said B. which R. demised it to the aforesaid D. for the same term, and which after the demise, &c.

12 Ed. 2.
Entry 69.

If H. lease lands unto R. for life, and afterwards grant the reversion to B. in fee, and R. attorn, and afterwards R. alien in fee, B. shall have this writ:

The king to the sheriff, &c. Command A. that, &c. he render to B. &c. into which, &c. but by R. (who demised it to him) who held it for his life of the aforesaid B. of the assignment which I. (who demised it to R. for the same term) thereof made to the aforesaid A. and which after the demise, &c.

20 Ed. 2.
Bret 849.

And if lands be given unto two, and the heirs of one of them, and he who hath the fee die, and afterwards the tenant for life alien in fee, the heir of him in the remainder shall have this writ:

Into which, &c. but by C. (who demised it to him) who held it for his life of the demise which H. thereof made to the said C. and D. and the heirs of him the said D. father of the said

said B. whose heir he is, and which after the demise, &c.
(a).

And by this it appeareth, that he in the remainder shall have a writ of *in consimili casu*, if tenant for life alien in fee.

C And if an abbot or prior lease lands for life, and alien, and the prior die, the successor shall have this writ:

Command A. that, &c. he render to B. one messuage, &c. which he claims to be the right of his church of Saint Thomas the Martyr of K. and into which, &c. but by C. to whom D. demised it, who held it for his life of the demise which S. some time prior of K. predecessor of the aforesaid prior, thereof made to the aforesaid D. and which after the demise, &c.

D And if tenant in tail make a lease for life, and the tenant for life alien in fee, the tenant shall have a writ *in consimili casu*. And so it seemeth, if tenant in tail lease the land unto another for the life of the lessee, and die, and the tenant for life alien in fee; the heir in tail may chuse to have a formedon, or to sue the writ of *consimili casu*, living the tenant for life. For the tenant in the action shall not have the plea to abate the writ, to say, that he hath title to have a formedon of the land, &c. But if tenant in tail lease lands for the term of his own life, where there is no descent, and afterwards the tenant for life alien in fee, and the tenant in tail die, his heir shall not have a writ of *consimili casu*, but shall be put to his formedon. For there he hath no title to have any other action by colour of any demise; but in the case before he had title, by reason of the discontinuance made for life, to claim by reason of the right in reversion descended to him, so that he had right by reason of the reversion in his father reserved upon the lease, and also by reason of the title of the entail to chuse what action he would have; *tamen quere*.

E A lease was made to one for term of life, the remainder to another in fee, and afterwards the tenant for life aliened in fee, for which he in remainder brought a writ *de consimili casu*, and the writ was abated. *Pasch. 7 Ed. 3.*

Vile 3 Ed. 2.
Entre 6. con.
For it is not given by the statute of Gloucester. But West. 2. cap. 24. see 206. fol.

29 Aff. 62. 21
Ed. 3. 11. Entry
10. 7 Ed. 3. 45.
31 Ed. 1. Entry
64. 21 Ed. 3.
Entry 10.

discontinuance

7 Ed. 2. Entry
7. 7 Ed. 3. 17.
Entry 61.

(a) See *ibid.* Aff. 11. 91. That the father may enter for the forfeiture.¹¹

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Q

But

(1) The citation here is incorrect. In 11. 25. 11. There is a case in which it was adjudged that where a son had possessed his father for life & he afterwards aliened in fee, the son might enter for the forfeiture.

Writ of Entry ad communem Legem.

18 Ed. 2. Entry
74 Nat. Br.
138. con.

But the court there said, that the cause was, because he in the remainder was not to have the remainder *in facto*, until it fell, and that after the death of tenant for life; and it is not like unto a reversion: but the law is not taken so at this day, but he in the remainder hath the remainder vested in him, as he in the reversion hath the reversion: for he shall have an action of waste, and shall enter for the alienation of his tenant, as well as he in the reversion, and therefore it followeth, that the remainder is in him *in facto*; for which cause I conceive, that judgment was not rightly given. And *Hil. 18 Ed. 2.* it was holden by justice *Herle*, that the writ lay for him in the remainder, &c. and the heir in tail brought a writ of *con-simili casu* upon an alienation made by tenant by the curtesy, and the writ was maintainable. *T. 31 Ed. 1.*

F

Writ of Entry ad communem Legem.

WHERE tenant in dower, or tenant by the curtesy, or for life, alien in fee, or for life of another, or in tail, the lands which they hold, &c. (a) after their death, he in the reversion, who hath it in fee, or for life, shall have this writ of entry *ad communem legem*; and the writ shall be such, &c.

G

[208]

The king to the sheriff, &c. command A. that justly, &c. he render to B. &c. which he claims to be his right and inheritance, and into which the same A. hath not entry but by C. who was the wife of D. (who demised it to him) who held it in dower of the gift of the aforesaid D. some time her husband, the father (or other ancestor) of the aforesaid B. whose heir, &c. as he saith, &c. and unless, &c.

H

And this is a writ for the heir in the reversion, who hath the same by descent, and may be in the *per, cui* and *post*.

A

661. 667. (a) And yet the death shall not be shewn by the writ. 16 Ed. 3. Brief

And

- B And if a woman recover dower, and afterwards alien in fee, and die; then the writ of entry *ad communem legem* shall mention the recovery, &c. And if the tenant by the curtesy alien in fee, and die, the heir shall have such writ:

4 Ed. 2. Brief
794

Command, &c. that, &c. he render to B. &c. which he claims, &c. into which the same A. hath not entry but by C. who held it by the law of England after the death of D. some time his wife, the mother of the aforesaid B. whose heir he is, as he saith, &c.

And it may be brought in the *per, cui* and *post*, as the case is.

And if tenant by the curtesy alien the fee, and die, he in the reversion who is heir in fee-simple, may sue this writ, or an assise of mortdauncestor given by the statute of Gloucester, cap. 3.

- C And if tenant for life alien in fee, and die, he in the reversion may have this writ in divers forms: If he have the reversion by descent, the writ shall be,

Command A. that, &c. he render, &c. which he claims, &c. and into which the same A. hath not entry but by C. to whom the aforesaid B. or C. father (or other ancestor) of the aforesaid B. whose heir he is, demised it for the life of him the said C. as he saith, &c.

And he may leave out these words in the writ, *which he claims to be his right and inheritance, &c.* when the demandant made the grant to the tenant for term of life who aliened, &c.

- D And this writ may be in the *per, cui* and *post*, as the case is.

- E And if the tenant for life alien and die, a man may bring a writ of *ad terminum qui præterit*, or this writ, at his election.

- F And if tenant for term of life grant over his estate unto another, and he in the reversion grant the reversion in fee, and the tenant attorn; and afterwards the second grantee alien in fee, the grantee in the reversion shall have such writ:

Into which the same A. hath not entry but by C. (who demised it to him) who held it for his life of the aforesaid B. of

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the assignment which I. who demised it to the aforesaid C. for the same term, made thereof to the aforesaid B. as he saith, &c.

And it may be in the *per*, *cui* or *post*, as the case is; G and in the writ which is the *post* shall be this clause:

And which after (a) the death of the aforesaid C. ought to revert to the aforesaid B. by the form of the assignment aforesaid, as he saith, and whereof he complains, &c.

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THE writ of *cessavit* lieth in divers ways: for one H writ is, where there is lord and tenant, and the tenant will not pay (b) his rent, nor do his services, as suit, &c. to his lord as he ought to do, nor hath sufficient goods or chattels upon the land to be distrained for the rent or services behind; but suffereth the lands to lie fresh, not occupied for two years following together; then the lord of whom the lands are holden may have the writ against the tenant, and if it be found for him, he shall recover the land, if the tenant will not find sureties to pay the rent then after: and the writ is of such form:

Tenant in dower shall have a cessavit, and lay the seisin in her husband: 1 Ed. 1. Cessavit 54. 41 Ed. 3. 17. 9 H. 7. 16. He for life shall have cessavit, but not lessee for years, for that is a præcipe. 12 R. 2. Cess. 45. Cessavit of a rent, 5 H. Cessavit of advowson, 23 Ed. 3. Cess. 46. 43 Ed. 3. 15. acc.

(a) But *Note*; The writ in the degrees does not make mention of the death of the tenant for life. See 16 Ed. 3. *Brief*. 661.

(b) *Note*; If the lord brings a *cessavit*, and supposes the tenure to be by two shillings rent, where he holds only by fealty, and the tenant traverses the tenure, and it is found against him, he shall be charged with the rent. 24 Ed. 3. 72.

He may tender the arrears without saving of his default. 27 Ed. 3. 89. the tenant took the quantity of the services by protestation, and pleads

over, &c. and after made default, and at the *petit cape* tenders the arrears according to his protestation, and there they were at issue on the quantity, &c. *Note*; If the tenant will save his tenancy, and tender all the arrears, he ought also to tender damages, 21 Ed. 3. 23. taxed by the Court.

In a *cessavit* for suit of court he tenders damages for not coming, by tax of the Court, 17 Ed. 3. 17. and it is no plea, that part of the services are not in arrear. 30 Ed. 3. 22.

The

The king to the sheriff, &c. Command A. that &c. he render to B. one messuage, &c. which he the same A. holds of him by certain services, which ought to revert to him the said B. by form of the statute provided by the common council of our realm, because the aforesaid A. hath now ceased in doing the aforesaid (c) services for two years, as he saith, &c.

And this writ is given by the statute of *West. 2. cap. 21.* and may be brought in the *per, cui* and *post*.

The *per* thus: *Into which the same A. &c. but by C. who demised it to him, who held it of the aforesaid B. by certain services, which ought to revert to him the said B. &c. (until) because the aforesaid A. or, because the aforesaid C. hath now ceased in doing the aforesaid services for two years.*

And it ought to be alleged in the writ by whom the ceaser was.

And in the *per* and *cui* thus: *Into which, &c. but by C. to whom D. demised it, who held it of the aforesaid B. &c.*

(a) And in the *post* thus: *Into which, &c. but after the demise which A. who held it of the aforesaid B. by certain services made thereof to A. of E. which ought to revert to him the said B. because the aforesaid, &c. as he saith, &c. and whereof he complains, &c. and unless, &c.*

And there is another form of *cessavit*, without making mention of any entry, thus:

Command W. of F. and A. his wife, that, &c. they render to the abbot of S. two messuages which I of B. held of him by certain services which ought to revert to him the said abbot, &c. (b) because the said W. and A. have now ceased in doing, &c.

48 Ed. 3. 4. The seisin was alledged in the feoffor and the ceffer in the feoffee, 39 Ed. 3. Br. cess. 19. acc. Note, That if the feoffee himself cease, the writ shall not be in the *per*, but generally, *cont.* If the feoffor cease before the feoffment; so if the disseisee cease before the disseisin, the writ shall be in the *post*. 21 Ed. 3. 44. Br. Cess. 17.
29 Ed. 3. Cessavit 43.

19 Ed. 3. Brief 149. 17 Ed. 3. 57. 33 H. 6. 45. 13 Ed. 3. Cess. 29. 44 Ed. 3. 27. 14 H. 6. 15. 19 Ed. 2. Cess. 30. 28 Ed. 3. 95.

(c) See a *cessavit* by several *præcipes* against A. and B. that A. and B. *de eo tenent & reverti debent eo quod* A. and B. *cessaverunt*. 20 Ed. 2. Brief 826.

(a) 20 H. 6. 28. A recovery in the *post* against a feme covert.

(b) *Eo quod prædicti* W. and A. &c. See such a writ awarded good; for by *Parning*, he cannot suppose none to be his tenant, but him by whose hands he was seised, 11 Ed. 3. Brief

477. 14 Ed. 3. Brief 269. and see accordant; for it may be A. is in by disseisin, and yet B. shall be said tenant to the lord; so if the same tenant leases for life, or in tail to A. who cesses, no other writ lies; wherefore the writ was awarded good, 21 Ed. 3. 44. See 39 Ed. 3. 13. And see what writ does not lie in this case. *Kelw.* 105, 131. 14 Ed. 2. Brief 815.

ibid. 34 & 35.
acc. But there
it is said, that if
the tenant cease,
and makes a gift
in tail, that the
lord may have
cessavit in the
per.

10 Ed. 4. 1 & 2.
37 H. 6. 45.

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He pleads that
the land was suf-
ficient to his dis-
tress without
saying overt, and
good.

2 H. 4. 5. 35 H.
6. Cell. 7. acc.

And the *cessavit* lieth for a suit of court; (c) but the donor in tail shall not have a *cessavit* against the tenant in tail: but if a man maketh a gift in tail, the remainder over in fee unto another, or unto the right heirs of the tenant in tail, there, in that case, the lord of whom the lands are holden *immediate* shall have a *cessavit* against the tenant in tail, because that he is tenant to him; &c.

And if a man cease to pay his rent and services for two years, and inclose the land, so as the lord cannot distrain, if he break the gates or the hedges of the land, the lord shall have a *cessavit*, although the tenant hath sufficient cattle upon the land to be distrained for the rent. For the land ought to be open, and also there ought to be sufficient to distrain for the rent, &c. But the land is not open to his distress, &c. and so open to his distress is a good plea, without saying more in such case. *M. 2 H. 4.*

And if the cattle of a stranger escape into the lands, those cattle are not sufficient or overt to his distress: but

(c) So it is adjudged; yet if the lord recovers, the issue shall have a formedon, 28 Ed. 3. 45. and it seems on the same reason, if the tenant makes a lease for life, the remainder in fee, a *cessavit* lies against the lessee for life, supposing him to be his tenant. But it seems, though he does recover, yet after the death of tenant for life, he in reversion shall have (avoid) his recovery against the lord; but if the tenant makes a lease for life, or a gift in tail, saving the reversion to himself, if afterwards a cesser be, the lord shall have a *cessavit*; but he ought not to suppose, that the tenant in tail is his tenant; for then this writ shall abate; but he shall have the writ here next adjacent. And it seems in such case, that he in the reversion is tenant to the lord, and a default in him of non payment, as well as in the other, shall bind him, and so the books seem to intend. 28 Ed. 3. 95, 96. 45 Ed. 3. 27. So a recovery in a *cessavit* against a disseisor, shall bind the disseesee, 20 H. 6. 28. a recovery

against a feme covert binds the husband. 12 Ed. 4.—A recovery against the husband and wife binds the wife. See 3 Ed. 3. 26. *contr.* in a *cessavit*, 7 H. 4. 20. 10 H. 6. 5. tenant for life cesses, if the lord recovers against him, it shall not bind him in reversion or remainder, 28 Ed. 3. 95. 45 Ed. 3. 23. but during the life of the lessee he shall be ousted of waste, or entry *in consimili casu*. Note; feoffee or tenant for life shall not have aid of his own cesser, 28 Ed. 3. 96. *contr.* *Panton* 3 Ed. 3. 26. If A. tenant of three acres cesses, and aliens to three several men an acre to each, three several *cessavits* lie, and there shall be special counts; but if he leases one acre to B. for life, and another to C. in tail, and afterwards cesses, a *cessavit* does not lie against B. or C. as to those two acres, but, he shall have a *cessavit* for the third acre, and count specially. Note; By the cesser of the mesne a *cessavit* does not lie for the lord, although the mesne after the cesser do purchase the tenancy. *Kelw.* 105.
if

if they be the tenant's cattle, it seemeth to be otherwise.

A If three men hold by one entire rent, as by a horse, and the lord recover two parts of the land against two of them, and the third find sureties, &c. the whole rent is extinct by that recovery.

B And a man shall not have one *cessavit* for lands which are holden by several services; but he ought to sue several writs (a).

C (b) If the lord distrain, pending the writ of *cessavit* against his tenant, the writ shall abate.

D And the lord shall have a writ of *cessavit* against tenant for life, where the remainder is over in fee to another (c).

E (a) The quantity of the service is not traversable in a *cessavit*, but shall be taken by protestation.

The seisin of the service is not traversable in a *cessavit*, but in *cessavit* generally the tenure is traversable.

F The aunt and niece shall not join in a *cessavit* for a cesser made before the title accrued to the niece: but for a cesser in both their lives they shall join in a *cessavit*: *aliter* of jointenants. N. Br. 139.

And a man may have a *cessavit* against several persons, and several tenants by several *præcipes*, &c. but not by one *præcipe*.

G A *cessavit* lieth not for him in the reversion against tenant for life, nor against tenant in dower, but against tenant by the curtesy by the lord paramount, because he is tenant to the lord paramount: *tamen quære* of that

35 H. 6. Cess.
7. acc. But if a man occupy at will his goods are sufficient.
3 Ed. 2. Avow.
206. Br. App. 20.
3 Ed. 3. 47. Cess.
40.
4 H. 6. 29. 10
H. 7. 24. 45 Ed.
3. 27. 14 H. 6.
25. 48 Ed. 3. 4.

2 Ed. 3. 28.
8 Ed. 3. 47.
Nat. Br. 139.
20 Ed. 3.
Cess. 47.
supra B.
48 Ed. 3. 4.
Cess. before
Seisin: 33 Ed.
3. Wilby
Cess. 42.
20 Ed. 3.
Cess. 47.
11 Ed. 3.
Cess. 50.
13 Ed. 2. ib. 51.
26 Ed. 3.
Cess. 61.
7 H. 4. 20.

(a) See 20 Ed. 3. *Cessavit* 33. accordant 21. The tenant says, that the demandant then, or before the writ purchased, took a distress for the services in the mean time arrear, and shewed what distress. *Parning*: will you say, that the distress was sufficient for the rent arrear? *Rolf* agreed to say it was sufficient. *Gra.* had you no distress? See 11 Ed. 3. *Cess.* 2.

(b) See 21 Ed. 3. 18. where acceptance of services pending the writ shall abate it, and falsify the judgment had against the scoffor.

(c) He shall have a writ, supposing that he held of him and cessed, 45 Ed. 3. 27. and so held on the same reason. 28 Ed. 3. 95. But if the tenant leases for life generally, saving the reversion to him, a *Cessavit* lies, but he ought not to suppose, that the lessee for life is his tenant.

(a) But it seems he may plead, that he held this land and others by the same services, as well as in an avowry. 2 Ed. 4. 27. 18 Ed. 4. 17. 23 Ed. 21.

case. But tenant by the curtesy, tenant in dower, or tenant for life, shall have a *cessavit* against the tenant who ceaseth.

It is a good plea in a *cessavit* to say, that he did not *H* cease for two years before the writ brought.

18 Aff. 1. Br.
Cess. 20.

And by the opinion of *Thorp* and *Hankford*, a man shall *I* have a *cessavit* against an abbot or a prior of the lands of their foundation; but I know no difference but that the lord shall have a *cessavit* against an abbot or a prior as well as against others, of the lands which they hold of him by rents or other services; but for the lands which they hold in *frankalmoigne* a *cess.* doth not lie for not doing the service, neither doth a *cessavit* lie for not doing homage or fealty.

Pot. 211. E.
6 H. 7, 2, 7.
3 H. 6. 45.
18 Aff. pl. 1.
18 Ed. 3.

And if a man hold lands in several counties by one *K* tenure and one service, if he cease, &c. a *cessavit* doth not lie. *Quod vide M. 18 Ed. 3. t. Affise (b).*

And there is another writ of *cessavit* grounded upon *L* the statute of *West. 2. cap. 41.* that if a man give land unto a religious house, or unto another, to find a chaplain to sing divine service, or to find certain tapers to burn before such an image, or to distribute certain bread and beer every week unto poor men; now if these services be not done for two years, nor sufficient distress upon the lands for the time to distrain for them, then he or his heir who gave the lands, shall have a writ of *cessavit*, thus:

The king to the sheriff, &c. command S. bishop of Worcester, that, &c. he render to H. earl of D. one messuage, &c. in the town of W. which M. lately earl of D. brother of the aforesaid H. whose heir he is, gave to W. some time bishop of W. and his successors, bishops of the place aforesaid, to celebrate yearly the obits of I. the brother, and B. the mother of the aforesaid T. and also the obits of the same T. and R. of H. after their decease, which ought to revert to the aforesaid earl by form of, &c. because the aforesaid bishop hath now

(b) In *Cessavit* the defendant pleads upon issue joined. 20 Ed. 3. *Cess.* that the plaintiff had distrained for 33. *Vide ante.*

ceased

ceased for two years in celebrating the obits aforesaid, as he saith, &c. witness, &c.

And in another form for a chauntry: Command the abbot of N. that &c. he render to B. and C. his wife, one messuage, &c. which R. the great grand-father of the aforesaid C. whose heir (a) she is, demised to E. some time abbot of N. or to the same abbot and his successors, abbots of N. to find a certain canon for celebrating divine services for the souls of the ancestors and successors of the same R. in the abby of N. which ought to return to the aforesaid B. and C. by the form of the statute provided by the common council of our realm in case of such demise, because the said abbot hath now ceased in finding the aforesaid canon for two years, as they say, and unless, &c.

(b) And the like writ may be sued against a parson for lands given to his predecessor in fee, to say divine service in such a chapel from three weeks unto three weeks.

(c) And so a man shall have such writ when lands are given for lights, or for drink for the poor, or other alms-deeds, if the said alms-deeds be withdrawn for two years together.

And where a religious man or other spiritual person bringeth the writ of *cessavit*, it shall not be said in the writ, *Quod clamat esse jus & hereditatem suam, &c.*

And a man shall have a *cessavit* for not doing several things which he ought to do, thus:

Command A. &c. that, &c. he render to B. &c. which T. the great grandfather of the aforesaid B. gave to W. some

(a) See this writ affirmed good in all points, 30 Ed. 3. *Brief* 29.

(b) Note 28 Ed. 3. 90. and 3 Ed. 3. 26. A recovery was against a parson on such a *cessavit de cantuario*, and held it should bind his successors, 7 H. 4. 20. 10 H. 6. 5. but *contr.* of a *cessavit per biennium*, 3 Ed. 3. 26. but by the justices, a *cessavit de cantuario* does not lie for lands that are

parcel of the foundation of the priory or chauntry. 7 H. 4. 20.

(c) *Quere*, if the tenant may tender the arrears, and to whom; and by *Hankf.* it shall be to the demandant, but *per Thirn.* not so in a *cessavit* of a chauntry, 12 H. 4. 24. See tender of arrears of houses and chauntry lands according to the discretion of the justices. 14 H. 4. 4.

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time rector of, &c. and his successors, rectors of, &c. to find a certain chaplain to celebrate divine service for the souls of the ancestors, of the same T. in the church of, &c. and two wax lights to burn the whole time wherein mass is said, which ought to revert him to him the said B. because the aforesaid, &c. hath now ceased for two years in finding the aforesaid chaplain and wax lights, &c.

And the like writs may be made in the *per*, *cui* and *post*.

There is another writ of *cessavit* founded upon the A statute of Gloucester, c. 4. where a man giveth certain lands in fee-farm to find him certain estovers to burn in the winter, &c. or clothing, or to pay the fourth part of the value of the land yearly, and afterwards he ceaseth, and lets the land lie fresh, not manured for two years together; then he or his heir who gave the land shall have the writ of *cessavit* which followeth, *viz.*

The king to the sheriff, &c. command A. that, &c. he render to B. one messuage, &c. which the same B. demised to him in fee-farm, rendering therefore by the year to him the said B. the third part or fourth part of the true value of the messuage aforesaid, which ought to revert to him by the form of the statute thereupon provided by the common council of our realm, because the aforesaid A. hath now ceased in the payment of the aforesaid farm for two years, as he saith, and unless, &c.

And in the *per*, thus: *And into which the same A. hath not entry, but by E. the father of the aforesaid B. whose heir he is, who demised it to him in fee-farm. Or thus in the per and cui: But by D. to whom the aforesaid B. or C. the father of the aforesaid B. whose heir he is, demised it in fee-farm, &c.*

And in the *post*, thus: *But after the demise which the aforesaid B. or C. father of the aforesaid B. whose heir he is, thereof made to D. in fee-farm, &c. hath ceased, &c. as he saith, and whereof he complains, &c. and unless, &c.*

And if a woman give lands in fee-farm, rendring to B her the moiety, or the third part of the value, and afterwards take husband, and the tenant cease for two years, and suffer the land to lie fresh, and pay not the rent, the husband and wife shall have a writ of *cessavit*, and the writ shall

shall suggest which to the *aforesaid* A. and B. his wife ought to revert, and not the wife only.

C And Note, That is to these gifts in fee-farm, to render the third part, or the fourth part, or to find a chaplain to say divine service, or to find him clothing or estovers, or to distribute, &c. upon which a writ of *cessavit* lieth, it becometh that they were made before the statute of *quia emptores terrarum*, &c. upon which feoffments a tenure is reserved and implied in the gift. But if a man at this day, after the statute of *quia emptores*, will give lands in fee-farm to render the third or the fourth part of the value of the land, or to find a chaplain, &c. if the tenant ceaseth, &c. the donor or his heir shall not have a writ of *cessavit*, because there is not any tenure betwixt them. *Quod vide M. 45 Ed. 3. t. Cess.*

45 Ed. 3. 1.
Ant. 208.

But if a man give lands in tail at this day to find a chaplain, or to render a third part of the yearly value, or to find estovers yearly, if the tenant cease of these services, it is a doubt whether the donor shall have a *cessavit* to recover the lands.

Ant. 208, 209.
N. B. 140.

And it seemeth that the donor shall have a *cessavit*; for a writ of *cessavit* is given by the statute of *Westm. 2. cap. 41.* for lands given to find a chaplain, or to find tapers, or to distribute alms among poor men. But then it seemeth that the same is intended of gifts in fee-simple, because the statute of *Westm. 2. c. 41.* saith,

N. B. 141. D.
209.

That an action shall lie for the donor or his heir to demand the lands so given in demesne, as it is appointed in the statute of Gloucester of tenements demised to do, or render the fourth part of the value, or more, and upon which feoffments a tenure was reserved and implied, because the statute of quia emptores, &c. was made after the statute of Westm. 2.

And also before the statute of *quia emptores terrarum*; if a man made a feoffment in fee, and did not say of whom the feoffee should hold, &c. then the feoffee ought to hold of the feoffor and his heirs. By which it appeareth that if a man at the time of the making of the statute of *W. 2.* gave lands to hold in fee-farm, rendering the value, or the third part, &c. the tenant held of the feoffor and his heirs, although

although

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although no tenure was expressed therein. And the statute of *Gloucester* was made *Anno 6 Ed. 1.* and the stat. of *Westm. 2.* made *Anno 13 Ed. 1.* and the statute of *quia emptores terrarum*, was made *18 Ed. 1.* And therefore if a man make a feoffment in fee at this day, to find tapers burning, or to render the third part of the value, or the like services, he shall have an action of covenant upon that feoffment, if it be made by deed indented, and no other remedy for the same, as I conceive.

7 R. 2. Cess. 18.
N. B. 141.

And if land be given before the time of memory to find a chaplain to sing in the chapel of the donor within his manor every week; now by the statute no man shall have a *cessavit* for the cesser of such service, but the donor or his heir; but upon that special matter, he shall have a special writ for him who is seised of the manor, if he and his ancestors have been seised of the manor, time out of mind, against him who ought to do service. *T. Anno 7 R. 2.* D

Ant. 209. I.

And a *cessavit* lieth not against an abbot or prior for a cesser of services of lands which they hold in *frankalmoigne*, because no service certain is expressed in the gift. Also it appeareth before the statute, that the lord could not have a *cessavit* against the tenant, but that he might seize the lands for the arrearages of the rent or services by judgment of the court, if it were found that they were behind, *quod vide P. H. 3.* But at this day he cannot do so, but must bring a *cessavit*. E

Writ of Contra formam Collationis.

Vi 2 & 3 Ma.

Dyer 109. Yet it seems by Br.

alienation 14.

That bishop dean and chapter, and others who are not religious, are not within this statute. 40 Ed. 3. 27. The writ doth not lie but where the land is given in *frankalmoigne*.

THE writ of *contra formam collationis* lieth, where a man gave (a) lands or tenements to an abbey, or other F

house of religion before the statute of *quia emptores terrarum*,

(a) So it extends to lands given by the founder; *contr. 33 H. 6. 6. per* others, as well as to those given by *Moyle*.

to hold of him in *frankalmoigne*, and afterwards the abbot or the convent alien the same land unto (b) another in fee: now he who gave the land, or his heir, may sue this writ of *contra formam collationis*.

- A (c) The donor or his heir may sue this writ of *contra formam collationis*, and it always ought to be sued against the abbot who aliened, or his successor, and not against the tenant of the land. But when he hath recovered the land against the abbot or his successor, then he ought to sue forth a *scire facias* against the tenant of the freehold of the land, and the tenant may plead in bar matter, which may prove that the demandant hath no title, or that he hath released his title. And if he who recovereth by the *contra formam collationis* enter upon him who is tenant of the freehold of the land, then it seemeth the tenant shall have an assise against him.
- B

[211]
Br. Contra for-
mam 501. 23
Ed. 3. Contr.
form. pl. 3.

23 Ed. 3. pl. 3.
9 H. 7. 16.

- C And this writ of *contra formam collationis*, lieth only for him or his heirs, who gave the land in *frankalmoigne*, and not for any stranger. But if he who ought to have the action dieth, and doth not bring any action for the same, yet his heir may bring the action to recover the land: for the alienation giveth right and title to him who gave the lands, or unto his heirs to recover the lands, and to have the lands again for that alienation. And it lieth against the successor upon an alienation made by his predecessor. And yet such writ brought against the successor upon the alienation made by the predecessor, was abated, *H. 17 Ed. 3.* But yet notwithstanding it seemeth the writ well lieth, because that the writ is given to him who gave the lands, and unto his heirs, to have the lands again by the statute, and that right cannot die. For the heir shall have the action upon the alienation made in the life of the father, because the right of the action descendeth,
- D

Contra formam
coll. 12 H. 4.
17. Hankford
contra to Fitz-
herb.

(b) See 24 Ed. 3. 71. It seems, that if a tenant in *frankalmoigne* of an advowson of the king, aliens for nine shillings, the king may present. *Dyer* 109. Alienation in tail is within the statute.

(c) See 18 Ed. 3. 5. 2 H. 4. 12. that it does not lie against the successor, upon the words of the writ given by the statute; *per Törn.* and *Hankf.*

Writ of Contra formam Collationis.

and by the same reason the heir of the donor shall have the action against the successor upon alienation made by the predecessor, because the right accrueth to the donor or his heir by alienation, for which cause it is reason that he have the action against the successor to recover that right; and to prove the same; the form of the writ in the Register is such :

The king to the sheriff, &c. Command the abbot of N. that &c. he render to B. one messuage, &c. which was given to the same house in frankalmoigne by the aforejaid B. or by H. the father of the aforejaid B. whose heir he is, and which by the alienation by him the said abbot, or by R. some time abbot of N. the predecessor of the aforejaid abbot against the form of the collation thereof made in fee, ought to revert to the aforejaid B. as he saith, &c. and unless, &c.

21 H. 4. 68.
Hankford.

And this writ of *contra formam collationis* doth not lie, E although the abbot alien in fee, &c. but where the abbot and convent alien in fee, &c.

Old Ass. 14. It
lieth of a rent.

And if a man recover in value lands against an abbot, who entreth into warranty and loseth, &c. the founder shall have a *contra formam collationis* upon the same, as it appeareth in the book. *M. 45 Ed. 3. 19.*

28 Ed. 3. contra
formam collatio-
nis 6.

If an abbot and convent alien an advowson in fee, at the next avoidance the founder or his heir may present unto the advowson, because they cannot sue a *contra formam collationis*. F

(a) And if an abbot and convent alien the lands which are given by the king in *frankalmoigne*, some say that the king may enter; but it seemeth that he ought to sue forth a *scire facias* upon an office found of the said alienation. See the case, *M. 45 Ed. 3. 18.* G

(a) And the writ of *contra formam collationis* is given by the statute of *Westm. 2. cap. 41.* and the process is summons, *grand cape* and *petit cape*. H

(a) Note; The king as founder shall have the benefit of this statute on an alienation made by the bishop, with consent of the dean and chapter in fee-farm. *Dyer 109. 38 H. 8. c.*

30. and 35 H. 8. c. 15. See the proviso there on erection of a new chapter. *Quere, 5 Co. cited in the margin of Dyer, ibid.*

And

- I And a writ of *contra formam collationis* lieth as well for land which was not given for the foundation of the monastery, if it were given in *frankalmoigne*, as for land of the foundation; but it ought to be given in *frankalmoigne* before the statute of *quia emptores*, &c. For a man could not give lands after the statute of *quia emptores*, &c. unto an abbot or prior to hold in *frankalmoigne*, because he ought to hold of the lord paramount, of whom the tenant held before. But the king at this day may give lands in *frankalmoigne* to an abbot or prior, for he is not bound by the statute. And also the king may license his tenant to give lands unto an abbot or prior in *frankalmoigne* in fee-simple, to hold in *frankalmoigne*; for he may dispense with the statute, and grant such authority to his tenant if he will. But it seemeth another lord cannot grant such licence to his tenant, by reason of the interests of the lord paramount: but the king and all the mesne lords together may grant licences unto the tenants paravail, who have the fee of the lands, that they may alien the same to an abbot or prior to hold of him in *frankalmoigne*, or to grant the same unto a lay person, to hold of him by certain services, because that the statute of *quia emptores*, &c. was made only for the advantage of the lords, and therefore they all may dispense with the statute, *Quare*. And see the form of the count in *t. contra formam collationis*, *Lib. d' Ent.* 129. And there it appeareth, that the heir shall have the action against the successor of the abbot, who aliened in the time of his ancestor.
- 33 H. 6. 6. Litt.
31. 10 H. 7. 23.
27 H. 26.
- K

Writ of Formedon in the Descender.

- L THE writ of formedon in the descender is grounded upon the (a) statute of *Westm. 2. cap. 1.* and lieth where a man giveth lands to one, and the heirs of his body begotten; or unto a man and a woman and to the heirs

(a) A formedon lies for a younger son inheritable by the custom, and he shall have a general writ, but a special count. 13 H. 4. *Garranty* 94.

of their bodies begotten; or unto a man and a woman who is his cousin in frank-marriage, by (b) force of which gift they are seised, and afterwards he alieneth those lands, or is disseised of them, and dieth; his heir shall have this writ of formedon in the descender to recover those lands given in tail.

And so upon every gift in tail of lands or tenements, if the ancestor alien the lands or tenements, or be disseised or deforced thereof, and die, he who is heir unto the lands by force of the gift shall have this writ of formedon in the descender against him who is tenant of the lands or tenements, or pernor of the profits of the same lands or tenements. But the writ against the pernor of the profits is given by the statute of *Anno 1 H. 7. cap. 1.*

And in a special case a man may have a formedon in the descender of the profit apprender in any lands or tenements, or issuing out of any lands or tenements: as if a man grant twenty shillings or twenty pounds, issuing out of any land or tenement, unto a man and the heirs of his body begotten, or unto a man in frank-marriage with his daughter; now if the donee alien this rent, or be disseised thereof and die, his heir, who is his son or daughter shall have the writ of formedon in the descender of this rent.

1 Inf. 21 b.
22 R. 2. Dis-
contin. 50.

(b) A special writ was on the reservation of an estate tail by a fine which is recited in the writ, 14 H. 4. 31. 1 H. 5. 19. and see there that he need not shew the fine. 2 H. 5. 4. See a special form of a writ on a feoffment to the uses of the feoffor and the heirs of his body, and it recites the feoffment to uses; and also the statute of 27 H. 8. in the writ (which had been better in the count). *Fifsh ver. Brocket, Dyer 181.*

Note; If A. recovers land again B. by formedon in descender of the gift of C. where there is no such gift, and dies: If the issue brings a formedon

against a stranger. and the gift is traversed, it shall not maintain the recovery, because he who recovers by supposal comes in paramount the tenant: but it is otherwise on a recovery in value by warranty; for there he against whom the recovery is, is as donor. *Kelw. 123.*⁽¹⁾

Note; On a feoffment to the use of one in tail the writ shall be general, and the count special. *Rast. 339.* and on a demise, or a recovery in value, both the writ and the count shall be general; but there must be a special replication. 15 Ed. 3. *Brief 324.*

(a) And

⁽¹⁾ The case in *Heilway* is thus stated. Note by *Kelw. 123* I bring formedon in descender agt a man where in fact there was no gift & I recover & become seised by force of the recovery, & afterwards I die & my issue bring formedon, the tenant may plead, he done so, because a formedon cannot be maintained upon a gift by supposal, but it is necessary that a gift should be alleged by matter in deed - (matter in fact) - But it is otherwise &c.

B (a) And so if a man grants the moiety of the profits arising out of his mill unto another man, and the heirs of his body, and the donee dieth, and his heir is deforced of the profits, the heir shall have a formedon in the descender for those profits; and the form of the writ is such:

The king to the sheriff, &c. Command W. master of the hospital of Saint Thomas the Martyr of S. that, &c. he render to I. C. the moiety of the issues forth-coming of two mills of him the said master in M. which B. some time master of the hospital, &c. gave to W. of C. and the heirs of his body issuing, and which after the death of, &c.

And so it seemeth, that (b) if a man grant to one and the heirs of his body, pasture for twenty oxen, or for an hundred sheep, &c. and the donee die, and his son, who is his heir, be enforced thereof; then he shall have a formedon in the descender; and the writ shall be,

The king to the sheriff, &c. command, &c. that, &c. he render to A. B. pasture for twenty oxen and one hundred sheep in one hundred acres of land in M. which, &c.

But if a man granteth common of pasture to one and the heir of his body begotten, who hath cattle, and the donee dieth, and the heir is deforced of the common, the heir shall not have a (c) formedon in the descender of the common, but a *quod permittat*, in the nature of a formedon, and shall count upon the gift and the especial matter. But the writ of formedon is an action auncestrel: for if he who is seised by force of the tail be disseised of the land, he shall have an assise of *novel disseisin*, or an action of trespass, at his pleasure, and not a formedon. And what manner of gift shall be said a gift in tail, and what not, appeareth by Mr. Littleton in his chapter of estate-tail; and therefore

Ant. 124.
42 Ed. 3. 26.
44 Ed. 3. 40.
contr. but it is
otherwise in a
formedon.

(a) See 16 Ed. 3. *Formedon* 29. and it shall bind the esplees in taking the corn, &c. and see there supposed that the corn mill be turned into a fulling mill, and he demands the profits; yet if livery had been, he might have demanded the moiety of the two mills. 45 Ed. 3. *Feoffments* 90. *Dower* 50. See such a formedon awarded good, 18 Ed. 3. 55.

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(b) See a good diversity herein, 27 H. 8. 12. *per Shelly*. 4 Ed. 2. *Brief* 793, 794.

(c) See a formedon in descender of a seignieury of the cathedral of Lincoln, brought against the bishop there, and one J. S. and adjudged good without being forced to a *quod permittat*. 18 Ed. 3. 27.

it is not necessary to express the same here. But the forms of the writs of formedon are many, as appeareth by the Register, thus :

Vide 2 Eliz.
Dyer 216.

The king to the sheriff, &c. command A. that, &c. he render to B. the manor of N. with the appurtenances which C. gave to D. and E. his wife, and the heirs of the bodies of them the said D. and E. (a) issuing, and which after the death of the aforesaid D. and E. ought to descend to the aforesaid B. the son and heir of the aforesaid D. and E. by the form of the gift aforesaid, as he saith, and unless, &c.

22 H. 6. 36.

(b) And if the gift be made in frank-marriage, then the form of the writ is such : *which C. gave to B. in frank-marriage with the daughter of the same C. and which after the death of the aforesaid D. and E. ought to descend to the aforesaid B. the son and heir of the said D. and E. &c.*

49 Ed. 3. 21.
48 Ed. 3. 7.
11 H. 4. 72.
46 Ed. 3. 9.
2 H. 4. 19.

(c) And in this writ of formedon the demandant ought to make mention of every man who was seised by force of the tail, and to name himself son and heir in his writ, in this manner : *and which after the death of the aforesaid D. and E. and F. the son and heir of them the said D. and E. ought to descend to the aforesaid B. the son and heir of the same F. &c.*

49 Ed. 3. 21.
11 H. 4. 72.
11 H. 7. 3.
8 Ed. 3. 11.
46 Ed. 3. 9.
27 Ed. 3. 81.

But if any of the heirs in tail were not seised by force of the tail, but survived their father, and died before they entered into the land, or had any seisin thereof; then it is not necessary to name them heirs in the writ, but only in this manner :

(a) *Quod dedit B. & C. uxori ejus & hæredibus quos idem B. de corp' ipsius C. procrearet, & quæ post mortem præd' B. & C. & D. filii hæredis eorum B. & C. de corpore ipsius C. per ipsum B. procreat', &c.* And held good on such a special gift, or otherwise he might have had this special writ here. 3 Ed. 3. 32. 12 H. 4. 1. adjudged. And Note; If the writ be *ad præfat'* B. it shall abate. 15 Ed. 2. Brief 818.

(b) It seems that the issue after the fourth degree may have a formedon,

supposing the gift to be general; or he may suppose it made in frank marriage. 12 H. 4. 9.

(c) *A. the great grandfather was seised, but not B. the grandfather; but D. the father was afterwards seised, and E. the son brings a formedon, and made each one heir to the other, and held good: Or he may say, eo quod post mortem A. & B. filii dicti A. & C. filii dicti B. consanguinei & hæredis dicti A. præfato D. filio & hæredi dicti C. descendere debet, &c.*

And

And which after the death of the aforesaid D. and of E. the son of the same D. and of F. the son of the aforesaid E. ought to descend to the aforesaid B. the son of the aforesaid F. (d) and cousin and heir of the aforesaid D. &c.

And so the writ ought always to make the demandant cousin and heir, or son and heir to him (e) who was last seised of the tail, as the case is; and the surest way for the demandant is, to make every man who is named in the writ, son and heir in the writ, although they were not seised of the lands by force of the tail; for it is not material whether they were seised or not, although he name them heir in the writ; *quod vide Anno 8 and 11 H. 6.*

11 H. 6. 20.
8 Ed. 2. 11.
22 H. 6. 36.
5 Ed. 3. pl. 67.

And if tenant in tail hath issue two sons, and dieth, and a stranger abateth, and entreth into the land; and afterwards (a) the eldest son dieth before he entereth into the land,

(d) So Note; In this writ he shews consanguinity, or consanguinity; but in a *scire facias* it is sufficient if he shews it *dehors*, 8 H. 4. 21. *et quod post mortem B. & A. filii & hæredis prædicti B. & C. filii & hæredis ejusdem B. & D. consanguinei & hæredis prædicti C. &c.* and it was abated by award; *contr.* if he had shewen how cousin in his count, 12 H. 4. 1. 49 Ed. 3. 21. 38 Ed. 3. 24. See 5 Ed. 2. Formedon 51. *contr.* 11 H. 6. 43. 31 Ed. 3. Brief 338. it is necessary that he convey himself heir to the donee in the writ, and not in the count only, 11 H. 6. 21. A gift was to the grandfather, and to the heirs of the body of the great grandfather; he ought to make the demandant cousin and heir to the great grandfather, or else each one son and heir to the other. Dyer 247.

(e) See 39 Ed. 3. 10. accordant. Note; in a formedon the demandant ought to make himself heir to the donee; and for this see 11 H. 6. 41. *Et quæ post mortem A. & B. filii & hæredis dicti A. & C. filii B. præfati* (the demandant) *filio & hæredi dicti C.* and

it was abated by award. 1. Because he did not make himself heir to him who was last seised. 2. Because when B. is supposed the only son and heir, you shall not make the writ repugnant. 3. Because the writ does not make him heir to the donor; for it may be that C. was a younger son; and therefore by Martyn, A. the grandfather donee is seised, B. the father being son and heir of A. and C. the son of B. præfato the demandant, *filio & hæredi C.* is not good altho' he makes himself heir to him who was last seised.

(a) And see accordingly adjudged, that he need not name him heir, or make the younger son, who is the demandant, heir to him; but there ought to be mention of him in the writ and count, because he survived his father. 4 Ed. Formedon 48. Yet it seems it is in the election of the demandant to mention his brother that survived, but held not the estate, and held, that the one writ or the other is good enough, 11 Ed. 2. Formedon 56. 11 H. 4. 7. 28 Ed. 3. 11. per Herle, 7 H. 6. 16. accordant; but in a writ of right it is necessary

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N. Br. 141,
744.
Aut. 196.

land, the youngest son shall have a writ of formedon in the descender, and needeth not name his eldest brother heir to his father in the writ, but only son, because he never had seisin of the land, but only held the estate; but if the eldest brother did enter, and was seised by force thereof, and died without heir of his body; then the youngest son who is his brother and heir, ought to mention the eldest in the writ, and him son and heir to his father, and to make himself brother and heir unto him.

And if the heir in tail be seised by force of the tail or not, and after enter into religion, and be professed, then his (b) heir shall have a writ of formedon in the descender in such form:

And which after the death of the aforesaid D. and after that E. the son and heir of the aforesaid D. took upon him the religious habit, in which habit he was professed, as he saith, ought to descend to the aforesaid B. the son and heir of the same E. &c.

But if the father maketh a feoffment in fee, or leaseth the land for life, and entreth into religion, and is professed: Yet his heir shall not have a formedon in the descender, *quia habitum religionis assumpsit, &c.* during the father's life, because the father may lawfully give his lands during his life; and after the death of the father, he may bring his common writ of formedon, if he will, or that special writ,

necessary that he be mentioned, 18 Ed. 2. *Formedon* 59. *con. in Mortdaunceffor*, and this is a good writ, &c. in right and possession.

See 10 Ed. 2. *Descents* 16. that the younger son need not mention the issue in this case. So 35 Ed. 3. *Garrany* 75. 4 Ed. 2. *Formedon* 40. *con.* 11 Ed. 2. *pl.* 56. 12 Ed. 2. *Entry* 8. 35 Ed. 3. *Garrany* 73. that he who seised, shall be said to hold the estate, and no other. So 46 Ed. 3. 39. 42 Ed. 3. 20. and 37 H. 6. *Brief* 132. But 31 Ed. 1. *Descent* 315. *con.* 11 Ed. 2. *Formedon* 56. See *Bro. Omiffon*, &c. 10. That if the elder brother dies in the father's life time, the younger son shall not mention him in the formedon in descender or reverter, 18 Ed. 2. *Formedon* 59. 11 H. 4. 72. *Nat. Br.* 250. So if the father does not survive the grandfather, the son need not mention the father in his writ. 5 Ed. 2. *Formedon* 51. 8 Ed. 2. *pl.* 54.

Note; In a *Sci' fa'* to execute a formedon in remainder, the plaintiff was driven to make mention of all those on whom the land descended in tail, though they were never seised. 25 Ed. 3. 44. See 10 Ed. 2. *Descents*.

(b) See according to this diversity, *Kerw.* 104. yet such issue shall have voucher and age, living his father, but shall hold the lands, &c. charged with the rent granted by his father. *Id.*

quia

quia habitum religionis assump', at his election, as it seemeth.

B And if tenant in tail goeth upon pilgrimage, and dieth in his journey, his heir shall have a formedon against a stranger who entereth and abateth; and the form of the writ shall be,

And which after the death of the aforesaid D. and after that E. the son and heir of the aforesaid D. took a journey of pilgrimage towards Saint James, in which journey he died, as he saith, ought to descend to the aforesaid B. son and heir, &c.

C And if tenant in tail hath issue two daughters, and one of them hath issue a son and dieth, and afterwards the tenant in tail dieth, and a stranger abateth; now the daughter and the son of the other daughter shall have a formedon in this form:

That he render to B. and C. one messuage which D. &c. and which after the death of the aforesaid E. and of F. one of the daughters of the same E. ought to descend to the aforesaid B. the other of the daughters of the aforesaid E. and to C. the son of the aforesaid G. and grand son and heir of the aforesaid E. &c.

D And if tenant in tail hath issue two sons, and dieth, and the eldest son entreth; and hath issue and dieth, and his issue entreth and dieth without issue of his body, then the youngest son, the tenant in tail, shall have such writ of formedon, if he be deforced of the land.

And which after the death of the aforesaid D. and of E. the son and heir of the said D. and of F. the son and heir of the said E. ought to descend to the aforesaid B. the son and heir of the aforesaid D. and cousin and heir of the aforesaid F. (a).

E And if a man give lands in tail unto a woman and the heirs males of her body, and of R. her late husband, begotten; if the woman die, and a stranger abate, her heir male begotten by R. her husband, shall have a formedon in this manner:

Which C. gave to D. who was the wife of R. and to the heirs male of the body of her the said D. and the aforesaid R.

(a) Without saying *Masculo*, for it appears by the writ, 11 H. 6. 45.

Writ of Formedon in the Descender.

*some time her husband, issuing, and which after the death of the
aforesaid D. ought to descend to the aforesaid W. son and heir of
the same D. of her body and the body of the aforesaid R. begotten,
&c.*

And if a man give lands to R. and unto the heirs which F
the said R. shall beget on his first wife, then the form of
the writ of formedon is such :

*Which W. gave to R. and to the heirs which the same R.
should beget of his first wife, and which after the death of the
aforesaid R. and A. the daughter of G. whom the first married,
ought to descend to the aforesaid I. son and heir of the same R.
of the aforesaid A. his first wife begotten, &c.*

And if a man give lands unto a woman, and unto the G
heirs which he himself shall beget on the body of the said
woman, and after they have issue between them two daugh-
ters, and one of them have issue a daughter, and die, and
after the donor and donee die, the aunt and the niece shall
join in a formedon for that land, if they be deforced there-
of ; and the writ shall be such :

*Which R. gave to M. and to the heirs which he the said R.
should beget of the body of her the said M. and which after the
death of the aforesaid M. and of A. one of the daughters (a) of
the same M. begotten of her body by the aforesaid R. ought to
descend to I. the other of the daughters of the same M. begotten of
her body by the aforesaid R. and to I. of S. the son of the afore-
said A. and cousin and heir of the same M. &c,*

And if lands be given to a man and his wife, and to the H
heirs of their two bodies, and they have issue a son, and die,
and the son be seised, and have issue three daughters, who
have issue, and die in the life of their father, and after the
issue of one of the daughters die in the life of the grandfa-
ther, and afterwards the father of the three daughters die,
the coparceners of the three daughters shall have a forme-
don in such form :

(a) Without saying (*Et R.*) be-
cause he had nothing in the tail: but
if on the shewing it happens to appear,
that R. was tenant by the curtesy,

thereon shewing the writ *Post mortem*
R. & M. shall be well enough, 20 *Ed.*
3. *Brief* 377.

And which after the death of the aforesaid E. and F. and of W. the son and heir of the same E. and F. of A. M. and K. the daughters of the aforesaid W. and of Sarah the daughter of the aforesaid M. ought to descend to the aforesaid A. the daughter of the aforesaid A. and to John the son of the aforesaid K. and to W. son of the aforesaid S. cousins and heirs of the aforesaid William, &c.

- I** And if lands be given to R. and I. and to the heirs of the body of R. begotten, and R. have issue four daughters, and he and one of his daughters enter into religion, and are professed, and I. die; and afterwards one of the daughters of R. die before she hath any possession of the lands, and the other two daughters survive, and are deforced of the land, they shall have a formedon in such form:

Which T. gave to R. and I. and to the heirs of the body of him the said R. issuing, and which (b) after the death of the aforesaid I. and after that the aforesaid R. and Grace, one of the daughters of the aforesaid R. took upon them the religious habit, in which habit they are professed, as it is said; and also after the death of E. another of the daughters of the aforesaid R. ought to descend to the aforesaid M. and A. two other daughters of the same R. &c.

- K** And if the reversion of tenant in dower be granted to a man in tail, and after the death of tenant in dower he be seised of the land by force of the gift, and have issue and die, and the issue enter and have a daughter and die, and afterwards a stranger enter, and abate in the land, the heir of the issue in tail shall have a formedon in this form:

Which I. of H. holds in dower of the inheritance of I. of S. and which the same I. granted to W. of S. to hold to him and the heirs of his body issuing, and which after the death of the aforesaid I. and W. and of R. the son and heir of the same W. ought to descend to the aforesaid Isabel the daughter and heir of the aforesaid W.

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(b) Note; The death of R. ought to be shewn, or else the writ shall abate

commendablement. 11 H. 6. 28.

And if a man lease lands for life, and afterwards grant A the reversion in tail, and then tenant for life die: now if a stranger abate in the land, the grantee in the reversion shall have such writ:

Which I. gave to P. for his life, and which the same I. granted to the aforesaid F. and the heirs of his body issuing, to have after the death of him the said P. and which after the death of the aforesaid P. ought to remain to the aforesaid F. by the form of the gift and grant aforesaid, &c. (a).

And if a man lease lands for term of life, and afterwards grant the reversion in tail by fine unto a man and his wife, and unto the heirs he shall beget on the body of his wife, and afterwards the tenant for life die, and the husband and wife enter, and are seised by force of the tail, and die, and a stranger abate and enter into the land; the heir shall have a formedon, thus:

Which A. gave to B. for the life of him the said B. by a fine thereof in the court of lord E. some time king of England, before C. and his companions then justices, &c. by his writ levied, granted to D. and E. his wife, to have after the death of the said B. to them the said D. and E. and the heirs which the same D. should beget of the body of her the said E. and which after the death of the aforesaid B. D. and E. ought to descend to the aforesaid F. the son and heir (b) of the aforesaid D. and E. of the body of the said E. by the aforesaid D. begotten, by the form of the gift and fine aforesaid, as he saith, &c. (c).

(a) It seems he may have a general writ in this case. 11 H. 6. 21.

(b) See the like writ awarded good, 11 Ed. 3. Brief 474. 41 Ed. 3. Brief 459.

(c) *In what manner Esplees shall be alleged in a formedon.*

In a formedon in remainder it is sufficient to allege the esplees in him who was seised by the gift, without alleging them in the donor; *quod vide* 9 H. 6. 53. 11 Ed. 3. Formedon 31. yet the count is not the worse, if they are alleged in the donor, 8 Ed. 3. 59.

Rast. Entr. 369. 27 Ed. 3. 84. and the reason in this case and in formedon in descender, is, for that the count shews a seisin in the donor. 15 Ed. 4. 17. In a formedon in descender, if A. gives to B. for life, remainder to C. in tail; B. dies, and C. enters and dies, and the issue brings formedon in descender; and held, 1. In no case in formedon in descender is it necessary to allege esplees in the donor; but where it is so, he is not prejudiced. 8 Ed. 3. 19. 10 Ed. 3. 5. 2. He may have in this case a general writ, supposing the gift to be immediately to C. and then

it

Another Writ of Formedon in the Descender.

B **T**HERE is another writ of formedon in the descender, which is called a writ of formedon of land, which one holdeth in coparcenary, and that writ lieth properly where tenant in tail dieth seised, and hath issue many daughters, and they enter, and make a division and partition of the land betwixt them, and one of the coparceners after the partition alieneth her part, and dieth; her heir shall have this manner of writ of formedon. And this writ lieth for lands given in frank-marriage, as well as for other lands given in tail.

And if lands in (a) gavelkind be entailed, and descend to many brethren, as heirs to their father, and they make partition betwixt them of the lands, and afterwards one alien his part, and die, his heir shall have a formedon of that which they held in parts; and the form of the writ is such :

The king, &c. Command A. that, &c. he render to B. eighty acres of land with the appurtenances, in D. which (b), together with other eighty acres of land with the appurtenances in the same town, L. gave to T. in frank-marriage with I. the daughter of the aforesaid L. and which after the death of the afore-

it is sufficient to allege esplees in C. without doubt, 9 H. 6. 53. 4 Ed. 3. 18. 3. He may count on the special matter, and then ought to allege esplees in B. and also in the donee, 11 Ed. 3. Formedon 32. 8 Ed. 3. 19. *Rast. Entr.* 363. yet see a formedon in descender, where a reversion was granted in tail, bound the esplees in such special writ in the donor, 5 Ed. 3. 17. 4 Ed. 3. 45. and also in the lessee for life, and in the grantee in tail. 4. A formedon in reverter ought to allege esplees in the donor, 9 H. 6. 53. and also in the donee.

Note ; In a *Scire facias* to execute a remainder, the plaintiff was driven to make mention of all those on whom the land descended in tail, although they were not seised. 25 Ed. 3. 44. See 10 Ed. 2. *Descents*.

(a) He ought to shew in his count, that the tenements are partible, but not in the writ. 11 H. 6. 44.

(b) *Note* ; The form of the writ, when all the lands in fee-simple are allotted to the elder son, and all the intailed lands to the younger, who aliens and dies, without saying *una cum*, &c. 20 H. 6. 13.

said

Another Writ of Formedon in the Descender.

said T. and I. (who held them for her purparty falling to her of the aforesaid one hundred and sixty acres of land, by partition between her the said M. and R. the sister of the same M. the daughter and other heir of the aforesaid T. and I. thereof made) ought to descend to the aforesaid son and heir of the said M. &c.

And if two coparceners be tenants in tail by descent C from their father or mother, and afterwards they make partition, and one coparcener have issue, and die, and the other coparcener die without issue, the heir of that coparcener who hath issue shall have a formedon in this form :

And which after the death of the aforesaid T. and I. and of K. the daughter and one of the heirs of them the said T. and I. (who held the same for her purparty falling to her of the aforesaid one hundred and sixty acres of land, by partition between her the said K. and M. the sister of the same K. the daughter and other heir of the aforesaid T. and I. thereof made) and of the aforesaid M. ought to descend to the aforesaid G. the son of the aforesaid M. and cousin and heir of the aforesaid K. &c.

And it appeareth by the Register, that a man shall have a writ of formedon of land which he held in partition by the name of a moiety in special cases ; as where two coparceners are daughters of tenant in tail, and they make partition between them of the land, and afterwards one sister dieth without issue, and the other sister alieneth the land, and hath issue and dieth ; the issue of the coparcener who had issue, shall have a formedon of all the land in tail in this form :

The king to the sheriff, &c. command F. that, &c. he render to H. ten messuages and twenty acres of land with the appurtenances, &c. which I. gave to A. and the heirs of his body issuing, and which after the death of the aforesaid A. and of M. the daughter and one of the heirs of the same A. who held a moiety of the aforesaid messuages and lands for her purparty, and of B. the daughter and the other heir of the aforesaid A. who held the other moiety of the same messuages and lands for her purparty, by partition thereof between them made (which B. as sister and heir of the said M. held the moiety aforesaid falling to the aforesaid M. after the death of the said M.) ought to descend to the aforesaid H. the son and heir of the aforesaid B. &c.

And

And the writ is good, because by the death of one sister without issue the partition is made void, and the other shall have the whole land as heir in tail.

- D And if a man give lands in tail unto I. his daughter, and to the heirs of her body, and I. have issue two daughters, and die, and they enter and make partition between them, and afterwards one of the daughters have issue two daughters, and one of the two daughters have issue four daughters, and die, and afterwards the aunt who was one of the daughters of the donee die without issue, &c. and a stranger abate; the four daughters, and the issue of the other sister, shall have a formedon in such form :

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That, &c. he render, &c. three messuages, one hundred acres of land, and twenty acres of meadow, and one hundred shillings rent, with the appurtenances in N. which together with the manor of B. with the appurtenances, A. gave to I. his son and to the heirs of his body issuing, and which after the death of the aforesaid I. and of C. the daughter and one of the heirs of the same I. (who held the same for her purparty falling to her after the death of the aforesaid I. of the said manor, messuages, land, meadow and rent, by partition between her the said C. and D. the daughter and the other heir of the same I. thereof made) and of the aforesaid D. and of A. and E. the daughters of the said D. ought to descend to the aforesaid Margaret, Margery, Katherine and Constantine, the daughters of the aforesaid A. and T. son of the aforesaid E. and cousin and heir of the aforesaid C. &c.

- A And if the moiety of any land be given to the husband and wife, and unto the heirs of their two bodies begotten, and they have issue four daughters, and die, and the sisters enter and make partition betwixt them, and afterwards the two sisters die without issue, and the third sister alien, and die without issue; the fourth sister shall have a formedon in this form :

And which after the death of the aforesaid Roger and Agnes, and of Alice the younger daughter and one of the heirs of them the said Roger and Agnes, (which Alice the younger held the said fourth part for her purparty falling to her of the aforesaid moiety, by partition between her and Isabel and Alice
the

Another Writ of Formedon in the Descender.

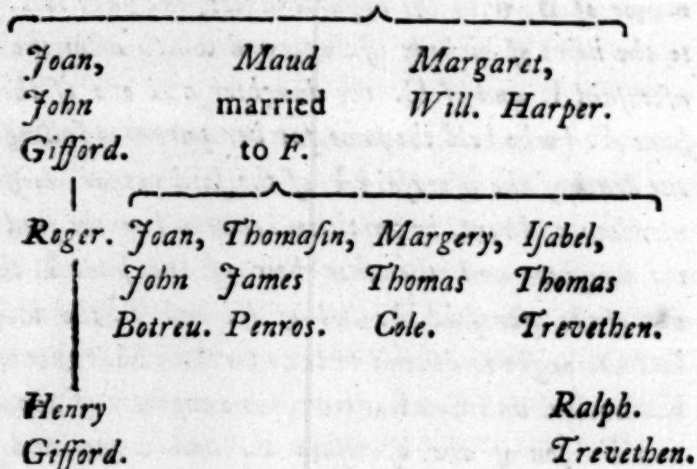
the elder and the aforesaid Maud, the daughters and three other heirs of the aforesaid Roger and Agnes his wife, thereof made) and of the aforesaid Isabel daughter of Roger, and of Alice the elder, ought to descend to the aforesaid Maud the sister and heir of the same Alice the younger, &c.

And to make a full declaration of the case of formedon in the descender, upon which the writ is founded, it is expedient to have the pedigree made in the writ, which you shall see here following :

Henry Russel.
Elizabeth his wife.

Henry Russel.

John. John. Alice.



Henry Russel gave land to Henry Russel and to Elizabeth his wife, to Henry their son, and to the heirs of the said Henry the son of his body lawfully begotten, and died, and after Henry Russel the father and mother died, and Henry Russel the son was seised by force of the tail, and had issue John, John and Alice, and Alice had issue Joan, Maud and Margaret, and Joan was married to John Gifford, and had issue Roger Gifford, who had issue Henry Gifford; and Maud was married to F. and had issue Joan, married to John Botreux. Thomasin married to James Penros, Margaret married to Thomas Cole, and Isabel married to Trevethen; and Isabel had issue Ralph Trevethen; and Margaret was married to William Harper : And Henry Russel the son died,

died, and *John* his son died, and *John* his brother entred and was seised by force of the tail, and died, and a stranger abated, and all the heirs in tail are dead, but *Margaret Harper* the wife of *William Harper*, *Henry Gifford*, *Thomasin* married to *James Penros*, *Joan Botreux* married to *John Botreux*, and *Margery Cole* married to *Thomas Cole*, and *Ralph* son of the said *Isabel*; now these coparceners shall join in the formedon, and the writ shall be such :

The king to the sheriff, &c. command Reginald Rees that, &c. he render to William Harper and Margaret his wife, Henry Gifford, James Penros and Thomasin his wife, John Botreux and Joan his wife, Thomas Cole and Margery his wife, and Ralph Trevethen, the manor of R. with the appurtenances, which Henry Russel gave to Henry of Russel and E. his wife, and to Henry the son of them the said Henry Russel and Eliz. his wife, and to the heirs of the body of him the said Henry the son of Henry issuing, and which after the death of the aforesaid Henry Russel and Eliz. his wife, and of Henry the son of Henry, and of John the son and heir of the same Henry the son of Henry, and of John the brother and heir of the same John the son of Henry, and of Alice the sister of the same John the brother of John, and of Joan one, and of Maud the other of the daughters of the same Alice, and of Roger the son of the aforesaid Joan the daughter of Alice, and of Isabel one of the daughters of the aforesaid Maud, ought to descend to the aforesaid Margaret, the wife of William, the third daughter of the aforesaid Alice, to Henry Gifford son of the aforesaid Roger, and to Thomasin the wife of the said James, and to Joan the wife of the said John, and to Margery the wife of the said Thomas, the other daughters of the said Maud, and to Ralph the son of the said Isabel, daughter of Maud, and cousin and heir of the aforesaid John the brother of John, &c.

*Another Writ of Formedon in the Descender,
called Infimul tenuit.*

THERE is another manner of writ of formedon in the **A** descender, which is called *formedon qui infimul tenuit*; and this writ lieth by one coparcener, or by one heir in gavel-kind of lands entailed, where they hold the lands entailed in coparcenary without any partition made between them of the same, and afterwards one coparcener alieneth her part unto a stranger in fee, and dieth without issue, or hath issue, and dieth; or if she dieth seised, and hath issue, and a stranger ousteth the issue, or the other coparcener putteth out the issue, the issue, or he who is heir to the tail of those lands, shall have this writ of formedon against the stranger, or the other coparcener, who deforced her of the land.

The king to the sheriff, &c. command the abbot of Westminster, &c. that, &c. he render to B. and I. his wife, two parts of thirty shillings rent of one thousand white loaves of bread of the price of twenty shillings, and of five flagons of ale of the price of ten pence, with the appurtenances in B. which together with a third part (a) of the same shillings rent, bread and ale, with the appurtenances in the same town, A. gave to G. and B. his wife, and to the heirs of the bodies of them the said G. and B. issuing, and which after the death of the aforesaid G. and B. and of R. the son and heir of them the said G. and B. and of T. the daughter and heir of the same R. and of W. the son and heir of the same T. and of M. the son and one of the heirs of the same W. (who held those two parts and the said part together with K. the daughter and the other of the heirs of the aforesaid W.) and of D. daughter and heir of the same M. and of the aforesaid K. aunt of the aforesaid C. and of F. daughter of the same K. ought to descend to the aforesaid I. the daughter of the aforesaid F. and cousin and heir of the aforesaid D. by the form of the gift aforesaid, &c.

(a) Note; The words are necessary. 5 H. 5. 8.

And by this writ it seems, that *I.* is seised of the third part of those rents ; and bringeth this writ of two parts of the rent.

B And there is another writ of formedon and *infimul tenuit*, where he shall make his demand by the name of the moiety, and that is where one coparcener is deforced of her part, and the other coparcener is in possession of her part ; and the writ is such :

Command the abbot of Westminster that, &c. he render to B. and I. his wife, the moiety of thirty shillings rent, and of the rent of a thousand white loaves of bread of the price of ten shillings, and of five flagons of ale of the price of ten pence, &c. with the appurtenances in the city of Westminster, with another moiety of the same thirty shillings rent, and of the rent of bread and ale, with the appurtenances in the same city, which A. gave to G. and B. his wife, and to the heirs of the bodies of them the said G. and B. issuing, and which after the death of the said G. and B. and of F. the son and heir of the same G. and B. and of T. the son and heir of the same F. and of W. the son and heir of the same T. and of R. the son and one of the heirs of the same W. (who held the same, and the aforesaid other moiety, together with M. the daughter and the other heir of the aforesaid W.) and of E. the son of the same R. ought to descend to the aforesaid I. the daughter of the aforesaid E. and cousin and heir of the aforesaid R. &c.

C And it appeareth by this writ, that one coparcener shall have the writ of formedon in the *infimul tenuit* against a stranger upon the possession of her ancestor, without naming the other coparcener who hath part in possession.

And if a man bring a formedon in the descender upon the seisin of his brother, and as heir to his brother ; he shall not mention in the writ, that his brother is dead without issue : but if a man bring a formedon in the descender as cousin and heir to any of his ancestors, he ought to mention in the writ how he is cousin and heir, and he ought to make himself heir to him who was last seised, and that by the same writ.

And

And a man shall have a formedon in the descender upon D
a gift in tail made after the statute *de donis*, if the alienation
were made after the statute, and not before.

40 Ed. 3.
4 Ed. 3. 9.
contr. 43.
16, 17.
19 H. 6.

And if lands in tail descend to two coparceners, and one E
entireth into the whole, and the other hath issue and dieth,
and she who entered into the whole dieth without issue,
the issue of the other coparcener shall have several (a) writs
of formedon, one of seisin of the grandfather, and in that
writ she shall not say *infirmul tenuit*, &c. because her mo-
ther was never seised; but of the other moiety of the land
of the seisin of her aunt, the writ shall say, *Qua infirmul tenuit* F
with her mother; for that seisin was a seisin to her mother, if he
would, &c. And if one coparcener after the death of the an-
cestor enter into the whole, and alien in fee, and die without
issue, the other coparcener shall demand the moiety as heir
unto her father, and the other moiety as heir unto her sister.

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And if the heirs in tail of gavel-kind bring a formedon A
in the descender, the writ shall be of common form, as the
writ of formedon brought by sisters, and in the count
the custom shall be shewn.

A formedon shall be brought of gorse, but not of an B
advowson.

And if tenant in tail be indebted to the king in the ex-
chequer, and die; and his heir enter into the lands, and
be distrained in the entailed lands for the king's debt: now
if the father's executors have assets or goods, or if the fa-
ther have lands in fee-simple in the hands of others, which
he hath aliened; the heir in tail shall have a special writ
unto the treasurer and barons of the exchequer, rehearsing the
whole matter; commanding them that they enquire there- C

4 Eliz. 240. b.
accordant, but
ib. 249. per
Brown held
contra.

(a) See accordingly adjudged, 40
Ed. 3. 8. where the case is, donee in
in tail had issue two daughters *A.* and
B. *A.* enters into the whole, and ali-
ens in fee, and dies without issue, *B.*
has issue *C.* and dies, *C.* brings a for-
medon, *Qua post mort. A. donee* and
B. filia of the donee descend debet to
the demandant (of one moiety) and
for the other moiety, *Qua post mort. of*
the donee, and *A filia & unius heredis*

of the donee for the one moiety, and
for the other to *B.* the heir of *A. qui*
infirmul, &c. adjudged, 43 *Ed. 3. 16,*
17. Yet see *per cur. 19 H. 6. 45.* if
the one parcener enters into the whole,
and after dies, and the other has issue
and dies, the issue shall have a forme-
don against the tenant in possession of
her mother, supposing *quod infirmul*
tenuit with the aunt, for the possession
of one is the possession of the other.

of; and if it be true, that they surcease to charge him upon the entailed lands; and the writ is such:

The king to his treasurer and barons of the exchequer, greeting: R. the son of I. of W. hath shewed unto us, that although he hold no lands or tenements which were his the aforesaid I.'s, saving twelve messuages and two ploughlands in I. with the appurtenances, which the aforesaid I. and C. his wife, mother of the aforesaid R. whose heir he is, held to themselves and to the heirs of the bodies of them the said I. and C. issuing, of the gift and grant of H. of C. by a fine thereof levied in the court of lord E. &c. our grandfather, and which after the death of the aforesaid I. and C. came to the hands of him the said R. by virtue of the fine aforesaid; you nevertheless distrain him the said R. in the lands and tenements aforesaid, which are so holden in fee-tail, for one hundred pounds to us for arrearages extended by you of the manor of Orford, of the aforesaid I. after we took upon us the government of the realm; and the tenements aforesaid, so given and granted to the said I. and C. in fee-tail, are committed to be rendered, you omitting as well the inheritance of the aforesaid I. as the tenants of the lands and tenements which were of him the said I. in fee-simple, which of right ought to be charged with his debts and have sufficient whereof those debts may be levied, disquiet and unjustly aggrieve him many ways upon that occasion, &c. whereupon he hath besought us to provide for him a remedy: we being unwilling that the aforesaid R. should be injured in this matter, command you, that if it shall appear to you in a legal manner, that the messuages and lands aforesaid were given and granted to the aforesaid I. and C. in manner aforesaid, and that he the said R. holdeth not any other lands and tenements which were of the aforesaid I. saving the same messuages and land, which came to his hands by virtue of the fine, and that the said heir or the tenants aforesaid, have sufficient whereof the said debts may be levied, as is before said, you cause the said R. to be discharged and acquitted of the aforesaid one hundred pounds towards us, charging those who, thereupon, of right ought to be charged, as shall be just. Witness, &c.

Vide 4 Eliz.
Dyer 216. A.
22 H. 6. 36.

And by this writ it appeareth, that if the heir or the other tertenants be not able to pay the debt, the

4 Eliz. 240.

lands which the heir hath in tail shall be charged; for some say that the king is not bound by the statute of *donis*, &c. but that he is in the same case he was before; *quere* thereof (a).

And if a man alien his lands in fee, and afterwards become indebted to the king, &c. if the alienee be distrained for that debt, he shall have a special writ to the treasurer and barons of the exchequer, rehearsing the whole matter, commanding them to surcease, &c.

And so if a man be distrained for a debt or duty due to the king, as executor, or as pledge for him who is the king's debtor, he shall have a special writ unto the treasurer and barons of the exchequer to inquire thereof, and to do right (a).

Writ of Formedon in the Remainder.

WHERE a man giveth lands to one in (b) tail, the remainder unto another in tail, and afterwards the first tenant in tail dieth without issue of his body, and a stranger abateth and deforceth him in the remainder; he in the remainder, or his heir, shall have this writ of formedon in remainder. And so if the first tenant in tail alien in fee, and die without issue of his body begotten, he in the remainder in fee shall have a writ of formedon in the remainder to recover his estate, &c.

And if a man give lands for term of life, the remainder to another, and the heirs of his body begotten, and the tenant for life die, and a stranger abate and deforce him in

(a) Note; Stat. 33 H. 8. c. 39. makes the heir in tail liable.

(a) Note; regularly where process is by summons, attachment, and *capias* (distress) after *nihil* returned on the summons, a *capias* shall issue. 21 H. 6. 56.

Note also; if the original formedon be returned *tardè*, the summons *sicut*

alias is instead of a new original, and there shall be nine returns between the tette and return, and it shall be a *fi fecerit te securum*. Dyer 252.

(b) And so it is, if the issue of the issue in tail dies without issue, for then on the whole matter, the tenant in tail is dead without issue; by Dyer. 4 Eliz. 233.

the remainder, that he cannot enter, he in the remainder, or his heir shall have a formedon in remainder to recover his estate, &c.

D So if a man make a gift in tail, the remainder in fee to another, and the tenant in tail alien in fee or in tail, or for life, and die without issue, he in the remainder, or his heir, shall have a formedon in the remainder to recover that land.

And it seemeth the same law shall be, if a man lease lands for term of life, the remainder to another in fee, and the tenant for life alien in fee, or in tail, or for life, and die, and a stranger abate and deforce him who ought to have the remainder; then he in the remainder, or his heir, shall have a formedon in the remainder to recover that land; *quod vide* 24 Ed. 3.

And that appeareth to be but reasonable, because he hath right to have the land; and then it is but reason that he have an action to recover the same: and that appeareth by the statute of *West. 2. cap. 24.* which willeth, *quod quotiescunque de cætero evenerit in cancellar' quod in uno casu reperit' breve, in consimili casu cadente sub eodem jure, & simili remedio indigente; concordent clerici in canc' in brevi faciend'*; whereby it seemeth that such writs are granted.

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A And though upon the statute of *donis conditionalibus*, there is no writ of formedon given by exprefs words, but a writ of formedon in the descender; yet it was never doubted, but that if a man make a lease for life, the remainder in tail to another, that he in the remainder in tail, or his heir should have a writ of formedon in the remainder, after the death of the tenant for life, if he were deforced of the land; and that is by equity of the statute of *donis*, as it seems: for no formedon in the remainder is given by any statute; and therefore it seems it shall be taken by equity of the statute: yet some have doubted thereof; and the form of the writ for him who claimeth the remainder in fee-simple, after the estate-tail determined, is such:

Writ of Formedon in the Remainder.

*The king to the sheriff, &c. Command A. that, &c. he ren- B
der to B. one messuage, twenty acres of land, &c. which C. gave
to D. and to the heirs of his body issuing, so that if the said D.
should die without heirs of his body issuing, the aforesaid mes-
suage and twenty acres of land with the appurtenances, should
remain to the aforesaid B. and his heirs, and which after the
death of the aforesaid D. ought to remain to the aforesaid B. by
the form of the gift aforesaid, because the aforesaid D. died with-
out heir of his body issuing, as it is said, and unless, &c. then
summon, &c.*

And for the heir of him upon whom the remainder was entailed, thus :

*(a) And which after the death of the aforesaid D. and B.
ought to remain to the aforesaid I. son and heir of the aforesaid
B. by the form of, &c. because the aforesaid D. died without
heir of his body issuing, as it is said, and unless, &c. (b).*

And if a lease be made for term of life, the remainder C
unto another, and unto the heirs of his body begotten ;
now after the death of tenant for life, if he in the remain-
der be deforced of the land by abatement of a stranger, then
he shall have such writ :

*Which A. gave to B. for the life of him the said B. so that
after the death of him the said B. the said messuages, and twen-
ty acres of land with the appurtenances, should remain to D. and
to the heirs of his body issuing, and which after the death of the
aforesaid B. and D. ought to remain to the aforesaid W. the son
(c) and heir of the same D. by the form of, &c.*

And if a reversion be granted to another in tail, and the D
tenant for life die seised, and a stranger abate and enter the
land ; the grantee in reversion shall have a formedon in
such form.

2 & 3 Ma.
Dyer 125.
0 Ed. 3. 5.

(a) See 5 Ed. 3. 25. 6 Ed. 3. 9. 7
Ed. 3. 4. The writ is good without
saying *per mortem* B, for that is supposed
by saying *filius* & *hæres*. See 11
H. 6. 43.

(b) See 31 Ed. 3. Brief 328. In
descender in a *scire facias*.

(c) Note ; If he demands as cousin

and heir to D. he may say *ut consan-
guineo* & *hæredi prædicti* D. or he may
say, *remanere debet dicto filio* & *hæredi*
G. *fili* & *hæredis dicti* D. &c. Ad-
judged int' Freke and Binford.

Note ; 'The *post mortem* is sufficient for
the estate for life, without shewing the
death with the *Eo quod*, &c. Dyer 349.

Which

Which G. gave to T. for the life of him the said T. and which the same G. afterwards granted to the aforesaid P. and M. some time her husband, to have after the death of the aforesaid T. to the aforesaid P. and M. and to the heirs of the body of them the said P. and M. issuing, and which after the death of the aforesaid T. ought to remain to the aforesaid M. by the form of the grant aforesaid, &c.

E And if A. give a manor except thirteen shillings and four pence rent to R. and I. his wife, and to the heirs of their two bodies begotten, and the remainder to one I. in fee, and afterwards R. aliens one house and one acre of land to one man, and three acres to another, and two acres of land to a third person, and the residue of the manor unto one B. in fee, except the rent of thirteen shillings and four pence; and afterwards the husband and wife die without issue betwixt them; he in the remainder shall have such writ against the alienee.

Command D. that &c. he render to I. the manor of F. with the appurtenances, except one messuage, six acres of land, and thirteen shillings and four pence rent in the same manor. And command G. that, &c. he render to the same I. one messuage and twenty acres of land with the appurtenances in F. and command T. that, &c. he render to the same I. three acres of land, &c. And command L. that, &c. he render to the same I. two acres of land with the appurtenances, &c. which A. gave to R. and I. his wife, and to the heirs of the bodies of them the said R. and I. issuing, so that if they the said R. and I. should die without heirs of their bodies, &c. (a) the aforesaid messuages, six acres of land and manor, except the messuage, six acres of land and rent aforesaid, should remain to the aforesaid I. and his heirs, &c.

And by this it appeareth, that a man shall have a writ of formedon in remainder against several tenants by divers *præcipes* in one writ.

And if a man lease lands for life, the remainder in tail, &c. the remainder over in fee to another, and the tenant

(a) *Nota bene*; A joint conclusion to one. 8 R. 2. Brief 929. several *præcipes*, because the title is in

for life die, and the tenant in tail alien in fee, and afterwards the alienee alien two parts of the land to one tenant, and the third part of the land to another tenant, and then the tenant for life die, and then the tenant in tail die without issue: he in the remainder in fee shall have a formedon in the remainder, in such form:

Command A. that, &c. he render to B. two parts of one messuage with the appurtenances in N. command E. that, &c. he render to the same B. the third part of one messuage with the appurtenances in the same town, which D. gave to C. for the life of him the said C. so that after the death of him the said C. the aforesaid two parts and third part should remain to the aforesaid F. and to the heirs of his body issuing, and if the said F. should die without heirs of his body issuing, the aforesaid two parts and third part should remain to the aforesaid B. and his heirs, all which after the death of the aforesaid C. and F. ought (b) to remain to the aforesaid B. by the form of the gift aforesaid, because the aforesaid F. died without heir of his body, as it is said, and unless, &c,

And by this it appeareth that a man shall have one writ by several *præcipes* against several tenants.

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If a man lease to one twenty acres of lands for life, and die, and the reversion descend to his brother, and he die, and the reversion descend to his two sisters, and they make partition of the lands, and ten acres be assigned to one sister to have to her and her heirs, and the other ten acres allotted to the other sister and her heirs; and one of the coparceners grant the reversion of her part and ten acres to a man and his wife, and the heirs of their two bodies

(b) But if the remainder had been in tail to the heirs of the body of F, and C. hath died living F. A. need not make mention thereof. 38 Ed. 3. 26. And by *Poffon*, 3 H. 6. 2. if land be given to A. for life, remainder to B. in tail, remainder to C. in fee, and B. dies without issue living A. and afterwards A. dies, C. shall have a writ, supposing the remainder tailed, or come to him presently on the death of

A. if he will. And *Note*; in this writ no mention is of the death of C. (who had but an estate for life) in *Eo quod*. *Dyer* 349. A gift was to A. in tail, the remainder to B. and C. in tail, the issue of B. bring a formedon in remainder, *Et quæ post mort. A. & B. & C. præfata petenti ut filio & hæredi B. remanere debet, &c. Eo quod prædicti A. obiit sine, &c.* and held good without shewing the death of C. in the *Eo quod*.

begotten,

begotten, and afterwards the tenant for life die, and a stranger enter and abate in the land; the husband and the wife who are in the remainder, shall have a writ of formedon in the remainder in this form:

Command R. of N. that, &c. he render to K. and A. his wife, ten acres of land with the appurtenances in M. which together with other ten acres of land with the appurtenances in the same town, R. of S. gave to W. for his whole life, and which M. of B. sister and one of the heirs of N. of S. brother and heir of the aforesaid R. of S. (to which M. the reversion of the aforesaid ten acres of land, was assigned for her purparty falling to her of the aforesaid twenty acres of land, by partition between her and Lucy the sister, and the other heir of the aforesaid N. of S. thereof made, after the death of the said W.) granted to the aforesaid K. and A. and to the heirs of the bodies of them the said K. and A. issuing, to have after the death of the said W. and which after the death of the same W. ought to remain to the said K. and A. by the form of the grant aforesaid, as they say, and unless they will do it, &c. and the said, &c.

A And if he who hath the remainder, or his heir, be once seised of the land by force of the remainder; then he shall never have a formedon in (a) remainder for that land, but a formedon in descender, because the remainder is once executed. And no tenant shall have a formedon in descender, or in remainder, where he is once in possession by force of the entail; or by force of the remainder; for after he hath possession of the land by force of the tail, or by force of the remainder, if he be put out, he shall have an assise of *novel disseisin*, or the writ of *quibus*, in the nature of an assise, &c.

B (b) If a remainder be given to two or three heirs, and one die, and the other survive and afterwards die, his heir shall have a formedon in the remainder, as heir to him,

(a) In every writ, if he makes mention of a remainder, he ought to suppose the donee dead without issue of his body. 39 *Ed.* 3. 27.

(b) But he ought to make the re-

mainder tailed, or come to both of them by his writ, and ought to shew the survivor in his count. 18 *Ed.* 3. 28. 38 *Ed.* 3. 26.

Writ of Formedon in Reverter.

without mentioning in the writ that he survived the other joint-tenant, &c.

Plow. 52. a.

And in a formedon in the remainder, it is necessary to shew C the deed thereof, if the tenant require *oyer* (c) of the deed, but in the count he shall not speak of any deed; but the tenant ought to demand *oyer* thereof, and then the demandant shall shew the same, and shall not mention the deed in the count.

And if the remainder be once executed in the writ of D formedon in the descender, there shall be no mention of that remainder, but the general writ of formedon shall serve in that case, as appeareth by the rule in the Register (a).

Writ of Formedon in Reverter.

Ante. 156. B.

W HERE one giveth lands to a man in tail, or in E frank-marriage with his daughter, and afterwards the donee, or his heirs, dieth without issue of his body; then the donor or his heirs may bring a writ of formedon in the reverter against him who is tenant of the lands so given.

Ant. 218. D.

See before
218 D.
2 Ed. 3.
Ma. Dyer
125.
6 Ed. 3. 5.

And so if one man giveth lands unto another in tail, and the donor granteth the reversion in fee unto another, and then the donee in tail dieth without heir of his body, the grantee of the reversion shall have a writ of formedon in the reverter to recover that land: but if he grant the reversion unto another in tail, and then the donee die without heir of his body, then that grantee of the reversion

(c) And so, though it be after view, and aid of the king granted. 18 Ed. 3. 34. But *Note*; the tenant shall have no answer as to the deed; and therefore shall not say *ne dona pas* by the deed, but generally *ne dona pas*, as the writ supposes; for the deed is only evidence to make the demandant responsible, 10 Ed. 3. 22. 1 Ed. 3. 49. &c. and therefore the tenant may plead *non tenere* after the deed delivered. See

2 Ed. 3. 57. A variance between the writ and the deed shall not abate it. 14 H. 6. 1. And *Note*; If he demand by reason of a use limited on the feoffment, he need not shew the deed. Dyer 277.

(a) And *Note*; Where a grant is by fine of lands in tail, yet the issue shall have a *scire facias*, although the father was (never) seised. 15 Ed. 3. Barr. 255.

shall

shall have a special writ, as appeareth before, amongst the writs of formedon in the remainder; and for the heir of the donor the form of the writ is such:

Command A. that, &c. he render to B. one messuage and twenty acres of land with the appurtenances in G. which C. the father of the aforesaid B. whose heir he is, gave to I. and E. his wife, and to the heirs of their bodies issuing and which after the death of the aforesaid I. and E. ought to revert to the aforesaid B. by the form of the gift aforesaid, because the said I. and E. died without heir of their bodies issuing, as he saith, and unless, &c.

F And if lands be given in tail, the remainder to another in tail, and afterwards the first tenant in tail die without issue, and the second tenant in tail in the remainder enter into religion, and be professed; the donor or his heirs shall have such a writ of formedon in the reverter.

Which C. the father of D. whose heir he is gave to F. and to the heirs of his body issuing, so that if the same F. should die without heirs of his body, the aforesaid messuages &c. should remain to H. and to the heirs of his body issuing, and after the death of the said F. and after that the aforesaid H. took upon him the religious habit, ought to revert to the said D. by the form of the gift aforesaid, because the said F. died without heir of his body issuing, &c. and unless, &c.

And if C. give lands in tail to E. and to F. his wife, and unto the heirs of their two bodies begotten, and the said C. have issue G. and B. and die, and afterwards G. die, and B. grant the reversion to H. for life, and afterwards E. die, and F. die without issue of their bodies, &c. B. shall have a formedon in the reverter in this form:

Which C. gave to E. and F. his wife, and to the heirs of their bodies, &c. issuing, and which G. the son and heir of the said C. brother of the said B. whose heir he is, after the death of the said E. granted to H. for his whole life, to have after the death of the said F. and which after the death of the aforesaid F. and H. ought to revert to the said B. by form of the gift and grant aforesaid, because the said E. and F. died without heirs of their bodies issuing, &c.

[220]

And it seemeth in that case, that if H. had survived F. and had entred into the land, and had been seised of the land

Writ of Formedon in Reverter.

land for term of his life, and then had died, that then the said *B.* should not have a formedon in the reverter, but a writ of entry *ad terminum qui prateriit*. But if *H.* had not entered into the land after the death of *F.* then the said *B.* should have the writ of formedon in the reverter. But if *H.* had entred into the land after the death of *F.* and had aliened the land in fee, then *B.* ought to have had a writ of entry *in consimili casu* during the life of *H.* and after the death of *H.* a writ of entry *ad communem legem*.

And if *F.* lease lands unto *P.* for term of life, and have A
issue a son and a daughter, and die, and the son grant the reversion to *I.* and to the heirs of his body begotten, and afterwards the tenant for term of life die, and the tenant in tail die without issue, &c. and then the son who was donor die, the daughter shall have a formedon in the reverter in this form :

Which F. gave to P. for his life, and which T. the son and heir of the said F. brother of the said B. whose heir he is, granted to I. to have after the death of the said P. to him the same I. and to the heirs of his body issuing, and which after the death of the said P. and I. ought to revert to the said B. by the form of the gift and grant aforesaid, because the said I. died without heir of his body issuing, as she saith, &c.

And if lands be given in tail, and the tenant in tail have B
issue two daughters, and afterwards one of the daughters have issue a daughter *B.* and the other daughter have issue another daughter *C.* and afterwards *B.* have issue *I.* and then all the daughters die, and then the said *I.* die without issue of his body, the donor or his heir shall have such writ :

And which after the death of the said E. and F. and of M. and A. the daughters and heirs of the same E. and F. and of I. the son of the said M. and heir of the same M. and A. ought to revert to the said I. of B. &c. because the aforesaid I. son of the said M. died without heir of his body issuing, &c.

In a formedon in the reverter in his count the demandant ought to lay the esplees in the donor, and in the donee.

In

D In a formedon in the reverter the demandant ought to mention the eldest brother who survived his father, &c. because he held the estate, although he was not seised of the land; as if the donor hath issue two daughters and dieth, and the eldest son dieth before he entreth into the land; in a formedon in the reverter brought by the youngest son, he ought to mention the eldest son, who was his brother, because he was once heir to the donee; but if the eldest son die in the life-time of the father, then the youngest son in the writ (a) brought by him shall not mention him as heir to the father, because he was never heir *in facto* to the father; but in a writ of right, which is called *præcipe in capite*, brought by the youngest son, as heir to his father, although the eldest son be dead in the life of the father, yet in his count he ought to make mention of the eldest son, because by possibility he might have held the estate, and have been heir to his father.

E And if a man give lands in tail, and the tenant in tail have issue, and die, and the issue die without heir of his (b) body before he entreth into the land, the donor may bring a formedon in the reverter, supposing that the donee died without issue, &c. and such writ was awarded good, *M. 18 Ed. 2.* because the issue was not living at the time of the purchase of the writ; and he cannot have a formedon in the reverter of the seisin of the issue, because the issue died before he had any seisin of the land.

(a) See 2 *Ed. 3.* 25. *N. Br. 150.* 18 *Ed. 2.* *Formedon 59.* The plaintiff counts in this writ, that he to whom the tenements were given— And held that the right came to the donor, although the donor was dead, leaving the donee in tail. But in a *contra formam collationis* it is otherwise, *F. contra form' coll'*, 7 *Ed. 3.* See 3 *Ed. 3.* *Formedon 43.*

(b) See 7 *Ed. 3.* 34. 18 *Ed. 3.* 28. *Et quod* the issue died without issue; and so the writ ought to be *per Shard*, when the issue was seised. 22 *H. 6.*

36. 18 *Ed. 3.* 42. See a formedon in reverter awarded good, supposing that the donee died without issue, where he had issue, who survived and was seised; *contr.* in the same case in a *scire facias* by him in remainder on an estate tail, 25 *Ed. 3.* 49. and *per Skip.* If the issue was seised after the death of the donee, he ought to suppose that the issue died without issue; *sed alii contr.* 26 *Ed. 3.* 75. See a supposal, *per mort.* of the donee, *eo quod* the donee died without issue. *Dyer 216.*

Writ of Ejectione firmæ.

VI. 1 & 2 Ma.
Dyer 117. In-
grave's case.

WHERE a man (c) leaseth lands for years, &c. F
and afterwards the lessor ejecteth the lessee, or
a stranger ejecteth him of his term, the lessee shall have
a writ of *ejectione firmæ*; and the form of the writ is
such :

Dyer 228. ?

*The king to the sheriff, &c. If A. shall make you secure, G
&c. then put, &c. B. that he be before our justices, &c. to
shew wherefore with force and arms he entred into the manor
of I. which T. demised to the said A. for a term which is
not yet passed, and the goods and chattels of him the said A.
to the value of, &c. found in the same manor, took and carried
away, and ejected him the said A. from his farm aforesaid, and
other wrongs to him did, to the great damage of, &c.*

And there is another form of writ, thus :

6 R. 2. Fitz.
Ejectione Firmæ
e cont.

*To shew wherefore with force and arms into the manor of B.
which I. demised to the said A. for the term of seven years, he
entred within that term, and occupied it for a long time, and
hindred him the said A. whereby he was not able to perceive the
issues of the manor aforesaid according to the demise aforesaid,
and took, &c. the goods, &c.*

Plow. 222. 1
Salk. 5. Co. Lit.
128. b.

(a) And in this writ he shall recover his term again, H
if the term be not ended, and the process is attachment
and distress, and process of utlagary. And anno 14 H. 7.
in *ejectione firmæ* brought against a stranger, the plaintiff

(c) Note; If he be not in actual
possession at the time of the ejectment,
this writ does not lie. *Kelw.* 130. this
writ lies of a gorse. *Dyer* 228. 11 *Ed.*
13. *Ant.* 198. where it lies, *vide ibid.*
and 21 *Ed.* 4. 10 and 30. 1 *H.* 5. 3.
12 *H.* 4. 10. *Dyer* 89.

Also this writ lies against the ejectioner,
though he has aliened. 12 *H.* 4.
10. See *Dyer* 89. *bona & catalla*
omitted.

(a) And therefore he shall not have
this writ after a re-entry, by *Hussy* 21

Ed. 4. 11. So entry of the plaintiff
pending the writ abates it. *Dyer* 226.
Yet *quære*, 13 *Eliz.* 13. although the
plaintiff enters pending the writ, he
shall recover his damages; for it is
but an action of trespass in its nature.
But the entry here seemed to be after
the term ended; and *Dyer* said, that
before 14 *H.* 7. the judgment was
only, that the plaintiff should recover
his term. *Dyer* 13.

had

had judgment to recover his term, and thereupon the defendant brought a writ of error, and the judgment was affirmed, and execution awarded for the plaintiff.

And 17 H. 8. such judgment was given in the common pleas, that he should recover his term and his damages.

I If a man lease lands for years, and afterwards suffer a feigned recovery against him by a writ of entry in the *post*, or other writ, if he who recovereth enter, the termor shall have an *ejectione firmæ* against him by force of the statute of 21 H. 8. cap. 15. because the statute giveth him power to retain, hold and enjoy his term. And by this it appeareth, that he who recovereth doth wrong unto him, if he oust him of his term; but before the said statute the lessee could not have such writ, because he who recovered came in by course of law. Ant. 198. [221]

A And if a man lease lands for years, and afterwards grant the reversion in fee, and the lessee attorn; now if the grantee of the reversion put out the termor, he shall have

B an *ejectione firmæ* against him. And so if the reversion escheat, and the lord by escheat eject the termor, he shall have an *ejectione firmæ* against him. *or quare ejectit*

C And if he in the reversion be a villain, and the lord claim the reversion, and afterwards eject the termor, he shall have an *ejectione firmæ* against him. *or q. ejectit*

Writ of Aiel or Bessaiel.

D WHERE the grandfather or great grandfather who was seised in his demesne as of fee of any lands or tenements of fee-simple, the day of his death, dieth, and a stranger abateth or entreth the same day, and deforceth the heir, the heir shall have this writ of aiel or bessaiel, as the case is; and it behoveth not that the grandfather die seised; for if he be seised the day that he died, it sufficeth to maintain this action; and the form of the writ is such:

Note, that in this writ a man cannot make title higher than his bessaiel, or the brother of his bessaiel, 3 Ed. 3. Item nota Fitz. Aiel 6. 40 Ed. 3. 38. It was found by assise, that the ancestor did not die seised, yet no estoppel to have

cofinage; for if he were seised the day in which he died, it sufficeth.

The

In aiel the defendant said, that the aiel had issue W. eldest son, who survived the aiel, and committed felony, and was abjured, and afterwards taken, and in eyre adjudged a felon; and good plea. 6 Ed. 3. Fitz. Aiel.

13 Ed. 3. Aiel.
2.

21 Ed. 3. 10.
Br. Cofinage.

6. In besaiel the release of the aiel warranty is good plea, 12 Ed. 3. joinder in action.

The king to the sheriff, &c. Command A. that justly, &c. E
he render to B. one messuage with the appurtenances in E. of
which W. the grandfather of the said B. or grandmother of
the said B. or great grandfather, or great grandmother of the
said B. whose heir he is, was seised in his (or her) demesne as
of fee, upon the day in which he died, as he saith, and unless he
will do it, and the aforesaid B. shall make you secure, &c.
then summon, &c. the aforesaid A. &c.

And the process in this writ is summons and grand F
 cape before appearance; and after appearance, if the
 tenant make default, a petit cape shall be awarded.

And although the ancestor go in pilgrimage beyond the G
 sea, and there die, yet the writ of aiel shall be general,
 as is aforesaid.

And so if the grandfather enter into religion, and be
 professed, the heir shall have a writ of aiel, if a stranger
 abate, and the writ shall be general, and shall not speak
 of his entry into religion, or of his profession, &c.

And the aunt and the niece shall join in a writ of aiel H
 of the seisin of their grandfather, by equity of the statute.
 And the statute shall serve for those dying seised before the
 statute, as for those dying seised since the statute.

And two coparceners brought a writ of aiel, and by
 their count supposed the ancestor to be great grandfather
 to the one, tresaiel to the other, and yet it was adjudged
 good. And the writ in the Register is such:

The king to the sheriff, &c. Command A. that justly, &c.
he render to B. and C. one mill, &c. of which D. the grand-
father of the said B. and great grandfather of the said B. whose
heirs they are, was seised, &c.

Writ of Cofinage (a).

I **W**HERE the trefaiel who was seised in his demesne as of fee the day he died, of any (b) lands or tenements, dieth, and a stranger entreth and abateth, then his heir shall have his writ of cofinage; and the form of the writ is such:

22 Ed. 3. 13.
conl.

K *The king to the sheriff, &c. Command A. that justly, &c. he render to B. one messuage with the appurtenances in N. of which (c) W. the cousin of the said B. whose heir he is, was seised in his demesne as of fee upon the day wherein he died, as he saith, and unless, &c.*

L And a man shall have a writ of cofinage of the seisin of the brother of the trefaiel.

M And the heir of the lord who was his trefaiel may have a writ of cofinage of the rent of the seigniorie against the tenant, if he desorce him of the rent, and may count of the seisin of his trefaiel; or if he will, he may have a writ of customs and services against the tenant at his election.

22 Ed. 3. Brief
308. It is admitted that trefaiel is cousin.

N And if a man have a writ of aiel, he shall not bring a writ of cofinage, and if he do, the tenant may abate the writ by pleading the seisin of the great grandfather; and also a man shall not have a writ of cofinage of the seisin of his great grandfather, but shall be put to his writ of befaiel, &c.

46 Ed. 3. 15. 12
H. 7. 4. 4 Ed. 3.
Aiel 4. 10 Ed.
3. 45. 12 H. 4.
cofin. 2. N. Br.
118. con.

Nor shall a man have a writ of cofinage of the death of his uncle, because he may have an assise of mortdauncestor of his seisin.

(a) In cofinage a man makes but an oblique descent only from the brother of the great grandfather, which is four degrees; but where the descent is lineal, it is two degrees. 30 Ed.

1. *Cofinage* 15. 32 Ed. 1. 34.

(b) See *contr.* that he is put to his writ of right, 22 Ed. 3. 16. 22 Ed. 3.

15. And *Note*; in some writs, when it is past the great grandfather he shall be named cousin; but in a count so named, abares it. 15 Ed. 3. *Brief.* 323.

(c) And he shall shew how cousin in his count. 12 H. 4. 1.

And

44 Ed. 3. 13.
 2 H. 5. 1.
 21 H. 3.
 Cofin. 13.
 14 Ed. 3.
 Cofin. 6.
 Supra G.

And cofinage lieth not between privies in blood, any more than an affise of mortdaunceſtor, but they ſhall be put to their *nuper obiit*.

And if a trefaiel go beyond ſea and enter into religion, and be profeſſed; yet the writ of cofinage ſhall be general, as the writ of aiel ſhall be. And the proceſs is ſummons, grand cape and petit cape.

Writ of Ad quod Damnum.

THE writ of *ad quod damnum* lieth, where a man would give lands or tenements in mortmain, as to a religious houſe, or to a body politick in fee-ſimple, then he ought to have the king's licence and the licence of the chief lords of whom the lands are holden to make ſuch gift. And before ſuch licences are granted the proper courſe is to ſue unto the king to have a licence, and to ſue this writ out of the chancery, directed unto the eſcheator to inquire what damage it would be to the king, or unto other perſons, if the king ſhould grant the licence: and upon the writ being returned and certified in the chancery, the king ought to give leave that the petitioner may alien or give in (a) mortmain; and this inquiſition ought to be certified into the chancery under the ſeals of the eſcheator and of the jurors, by whom it was found; and the form of the writ is ſuch:

[222] *The king to his beloved I. of K. his eſcheator in the county of A. L. greeting: We command you, that by the oath of honeſt and lawful men of your bailiwick, or of your county, by whom the truth of the matter may be better known, you diligently inquire if it will be to the damage or to the prejudice of us or of others, if we grant to B. that he may give and aſſign one meſſuage, two acres of land and one acre of meadow with the appurtenances in W. to a certain chaplain to celebrate divine ſervice*

(a) Entry for mortmain. Note; Diſſeiſor and diſſeiſee, tenant for life, and he in remainder of a ſeigniory, ſhall have only one year. *Kew. 111. quære.*

for the soul of him the said B. and the souls of his father, mother and ancestors and of all the faithful deceased, in the chapel of the blessed Mary of W. or in the parochial church of the blessed Mary of S. every day; to have and to hold to the said chaplain and his successors celebrating divine service in the church aforesaid, or in the said chapel, for the souls aforesaid, every day, as is before said; and if it be to the damage or prejudice of us or of others, then to what damage and what prejudice of us, and to what damage and what prejudice of others, and of whom, and how and in what manner, and of whom or what persons the said messuage, land and meadow are holden, and by what service, and how and in what manner, and how much they are worth by the year in all issues, according to the true value of the same, and who and how many mesnes there are between us and the aforesaid B. of the messuage, land and meadow aforesaid, and what lands and what tenements remain to him the said B. besides the donation and assignment aforesaid, and where, and of whom or of what persons they are holden, and by what service, and how and in what manner, and how much they are worth by the year in all issues, and if the lands and tenements remaining to the said B. besides the donation and assignment aforesaid, be sufficient for the customs and services owing to be done, as well for the messuage, land and meadow so given, as for the other lands and tenements retained to himself, and all and singular other charges which he sustains, and hath been accustomed to sustain, as in suits, views of frank-pledge, aids, tallages, watches, fines, ransoms, amerciaments, contributions, and other charges whatsoever emerging to be sustained; and that the same B. may be put in assises, juries and other recognizances whatsoever, as he might be put before the gift and assignment aforesaid, so that the country, by the gift and assignment aforesaid, in default of him the said B. may not be charged or aggrieved more than usual, and without delay send the inquisition thereupon made distinctly and openly to us in our chancery, under your seal and the seals of those by whom it shall be made, and this writ, Witness, &c.

Or thus: That the heirs of him the said B. may be put in assises, juries and other recognizances whatsoever, as his ancestors have been accustomed to be put before the gift and assignment aforesaid, so that the country, &c.

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T

By

Writ of Ad quod Damnum.

By which it appeareth, that it is damage to the country, if a freeholder who hath sufficient lands to pass upon assises and juries, should alien his lands in mortmain, by which alienation his heirs would not have sufficient lands after the death of the father to be sworn in assises and juries.

And by the rule of the Register, if a chaplain or a woman will give their lands or tenements in mortmain; yet in the writ of *ad quod damnum* shall be this clause, *and that they the said, &c. may be put in assises, juries and other recognizances whatsoever*; by which it appeareth, that they ought to have sufficient lands, besides lands to descend to their heirs. B

And if a chaplain and layman alien in mortmain jointly by licence, then the writ of *ad quod damnum* shall be in this form. C

And that the said A. and B. and the heirs of the said B. the chaplain, may be put in assises, juries, &c. as the said A. and the ancestors of him the said B. the chaplain, have been accustomed to be put before the gift, &c. so that the country, &c. in default of him the said A. and of the heirs of the aforesaid B. may not be charged, &c. more than usual, &c.

And if an abbot choose to give lands or tenements in mortmain to another abbot or prior or body corporate, yet he ought to have the (a) king's licence so to do, because of the words of the statute of mortmain: *So that the lands and tenements may not by any means come into mortmain.* And there he ought to sue a writ of *ad quod damnum* to inquire as aforesaid: but neither this clause, *and that he the said abbot, &c. may be put in assises and juries, &c.* nor this *ita quod patria, &c.* shall be inserted in the writ. But now the common experience is, not to sue the writ of *ad quod damnum* when they purchase leave to alien in mortmain; but the practice is, to have these words in the end of the king's patent of licence; *and this, without any writ of ad quod damnum, or our other writ and inquests or commands* D

(a) And therefore if the tenant in- may enter. *Keko. 111.*
feoffs the abbot himself, the lord

thereupon,

thereupon, to have and prosecute. But it seemeth doubtful whether these patents are good or no, if it be evidently proved, that such patents are unto the damage of others who are the king's tenants, by which the king's tenants ought to have wardships or escheats, &c. and by which the king loseth the wardship of his tenants, or that the king loseth any advantage which he might have, if such patents were not granted. And therefore I conceive that the best course is, to sue forth such writs of *ad quod damnum* to inquire of what damage such licences in mortmain will be to the king or others, so that the king be not deceived in his grant. And see a good case to this purpose in the title of *Grants* in the abridgments. *H. 16 Ed. 3. pl. 53.*

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A And there is another writ of *ad quod damnum* to inquire if it will be to the damage, &c. If the king grant to B. that he may give five houses, &c. to C. guardian of the chapel of our lady Saint Mary, and to his successors, guardians, and chaplains of the aforesaid chapel for the maintenance of the said guardian and two chaplains to do divine service in the said chapel and in the church of P. &c. in the honour, &c. and for the souls, &c.

B And if the king give licence to one to grant a rent unto an abbot and his successors, yet he ought to sue forth a writ of *ad quod damnum*, if he have not these words in the patent ; and this without any writ of *ad quod damnum*, &c. And the form of the writ is such :

3 Ed. 4. 14.
9 H. 7. 9.
4 H. 6. 9.

If we grant him the said A. that he may give and assign one hundred marks rent with the appurtenances in N. to our beloved in Christ the abbot and convent of N. and to the prior and monks in the priory of Saint James, Bristol, (which is a cell of the said abbey for those abiding there) to find two chaplains, &c. in the church of the said priory, to hold to the same abbot and convent and priory, and monks dwelling in the said priory, and to their successors, to find two chaplains, &c. in the church of the said priory, as is before said, to celebrate divine service every day for ever, or not ? And if it be to the damage, &c. to what damage, &c. and of whom or what persons the said rent is holden, and by what services, and how and in what manner, and who and how many mesnes are there, &c. (as in the first writ.)

T 2

And

Writ of Ad quod Damnum.

And it shall not be said in the writ what the value is yearly, because rent ought not to be extended.

And if a man sue to the king for a licence to give an advowson to two chaplains and to their successors to hold to their proper use, and that they may hold the same to them and their successors, appropriate for ever, to say divine service, &c. he shall have a writ of *ad quod damnum* to inquire what damage such grant would be to the king or others, and that writ appeareth in the Register. And in the writ of *ad quod damnum* the substance of the licence to alien in mortmain ought to be expressed.

And if a man will exchange lands, tenements or rents with another abbot or body corporate, upon the licence (a) granted, he ought to sue forth a writ of *ad quod damnum*; and in the writ both the lands which are given, and the lands which are taken in exchange, ought to be mentioned, and to inquire of them, as above.

There is another manner of form of *ad quod damnum*, where the king granteth a licence unto an abbot or a prior to purchase twenty pounds land, and afterwards one man will give lands to the said abbot of the value of five pounds, another will give him lands of the value of forty shillings, and another man lands of the value of twenty shillings; the form of the writ of *ad quod damnum* shall be such:

The king to his escheator, &c. We command you, &c. if it may be to the damage of, &c. if we grant to A. that he may give and assign one messuage and forty acres of land with the appurtenances in the same town, and if we grant to E. of F. that he may give and assign thirty acres of land in the same town, to our beloved in Christ, &c. to hold to them and their successors in part of satisfaction of twenty pounds of lands and rents by the year, which Lord Edward lately king of England, our grandfather, granted licence to purchase by his letters patent to them the said abbot and convent, as well of their own fee as of other, except of lands and tenements which were holden of him our said grandfather in chief: and also to I. of N. that he may give and assign one messuage with the appurtenances in the

2 H. 7. 6.

(a) See 19 Ed. 3. Mortm. 8. Both of them were men of religion.

same town to the same abbot and convent, to have and to hold to them and their successors for ever, in exchange for one messuage in the same town to be given and granted to him the said I. of N. by the said abbot and convent, to have and to hold to him the said I. of N. and his heirs, in exchange aforesaid (as before is said) for ever, or not? And if it may be to the damage, &c. (as before.)

G And by this writ it appeareth, that he may have one writ for divers purchases to be made; and also that a licence made unto an abbot, in the time of one king, is good to purchase land in the time of another king.

Vide 16 Eliz.
Plow. Com.
457. D.
1 Inst. 52. b.

H There is another writ of *ad quod damnum* where the king granteth to an abbot or to a bishop licence to purchase an advowson, and to appropriate the same to him and his successors for ever.

And another writ where the king granteth unto an abbot or bishop licence to appropriate an advowson whereof they are seised in fee in their own right.

By which it appeareth, that a bishop or an abbot could not have appropriated an advowson, whereof they were seised in fee in their own right, without the king's licence; and if they did, it was forfeited for mortmain.

14 Ed. 3.
Quar. Imp. 13.
21 Ed. 3. 5.

I And if an abbot hold of another man by a certain rent-service, the lord (a) cannot release the rent unto the abbot without the king's licence; and if he do, it is mortmain, and the king shall have the rent; and therefore is the writ of *ad quod damnum* ordained, that where the lord hath licence to release the rent unto the abbot, to inquire to whose damage the same shall be, &c. as it shall be of lands &c.

38 Assise 52.
Br. Mortm. 20.
it is no mortmain.
21 Ed. 3. 18.
Br. Mortm. 16.
& 31. it is no mortmain because the rent is extinct.

A There is another form of *ad quod damnum* where the king giveth a licence to alien lands and an advowson, which are holden of him *in capite*, unto an abbot and to appropriate them. And another form of writ where the king granteth a licence to one to alien certain lands, and a reversion of other lands, to a chaplain in mortmain.

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(a) But if he releases the rent, saving to himself the services; or if he release to hold to him in frankal-

moigne, it is not mortmain. 10 Ed. 3. 5. 21 Ed. 3. 18. *Quere.* 10 Ed. 3. Mortm. 17. Bro. Mortm. 31.

Writ of Ad quod Damnum.

And if the villain of an abbot or prior (a) purchase lands B
or tenements in fee, the abbot or prior cannot enter into
them without the king's licence; and if he do, it is mort-
main. And it appeareth that the law is so, because there
is a writ of *ad quod damnum* in the Register to inquire to
whose damage the same is if the king grant such licence
unto an abbot or prior, that they may enter into such lands
or tenements which their villains have purchased.

And see the statute *de religiosis* how this case shall be C
taken to be within the words of the statute, or by the
equity of the statute.

And it appeareth by the several forms of writs of *ad quod*
damnum which are in the Register, that the writ ought to
be made according to the letters patent of licence, because
it ought to rehearse the effect of the letters patent; and
therefore the forms of the writs of *ad quod damnum* vary as
the letters patent themselves vary. And it appeareth by D
the Register, that if a man purchase letters patent of li-
cence to give lands unto an abbot in exchange for a rent,
which the abbot releaseth to him, &c. that he shall have
a writ of *ad quod damnum* thereupon.

And if a man purchase a licence to found a house with E
lands or to make a prebend, and to give lands to the same,
&c. he ought to have a writ of *ad quod damnum* upon the
same.

And if a man devise lands or rents to his executors and F
to their heirs, to dispose according to his will, and after-
wards he make his will, that they give the same in mort-
main; they ought to have licence to do so by the king's
letters patent, and a writ of *ad quod damnum* upon the same,
as appeareth by the Register.

If an abbot or a dean and chapter have a rent in fee G
issuing out of lands, and the tenant of the land will grant
by his deed, that they and their successors shall distrain
for that rent in other lands, it appeareth by the Register,
that he ought to have the king's licence to make such

16 Ed. 3.
Excha. 2.
Perk. 2.

17 Ed. 3. 57.
29 Ed. 3. 33.
21 Ed. 3. 24.
contr.
7 Ed. 3. 57.
contr.

(a) But it is otherwise, where the villain has the lands by descent. 48 Ed. 3. 29. 41 Ed. 3. 16. 19 H. 6.
57. 13 Ed. 3. Brief 262. grant:

grant: and that a writ of *ad quod damnum* shall be granted in such case to inquire what damage or prejudice the same will be to the king or others, &c. and yet it is hard to prove, how that shall be taken to be within the words of the statute of mortmain, because such grant is a good grant of a rent in fee, although there were not such rent before to the abbey or dean and chapter. It seemeth, that the grant made without licence (b) shall be as a new grant in law. *Tamen quære.*

9 H. 6. 9.
Litt. 48.

41 Ed. 3. 15;
9 H. 6. 9.
1 Aff. 10.
Br. Aff. 105.

H There is another manner of *ad quod damnum*, and that is, where the king's tenant will alien his lands which he holdeth of the king to another in fee, or in tail, or for life, then by the course of law he ought to have the king's licence by his letters patent so to do, and before the alienation be made, the king ought to be certified by a writ of *ad quod damnum* what damage or prejudice that alienation will work to the king: but at this day this writ is not used to be granted, but only the licence to alien without regard to any writ of *ad quod damnum* to inquire thereof. But yet such licence must not be allowed of by the justices when the same is shewed, without bringing a writ out of the chancery unto the justices, which is called *quod permittat*, &c. for which see *M. 33 H. 6.* in title *Fines*. And the form of the writ of *ad quod damnum* is such:

32 H. 6. 27.
contr. 41 Aff. 3.
contr. 10 Aff. 4.
contr.

The king to his escheator, &c. We command you, &c. diligently to inquire if it may be to the damage or prejudice of, &c. if we grant to I. that he may enfeof P. of his manor of N. with the appurtenances, which are holden of us in chief, as it is said, to have and to hold to him and his heirs, of us and our heirs by the services thereof due and accustomed, for ever, or not? And if it may be to the damage and prejudice of us, or of others, &c. and what prejudice to others, and of whom, and how, and in what manner, and whether the said manor be holden of us in chief, (as before is said) or of any other; and if of us, then by what service, how and in what manner, and how much the said manor is worth by the year in all issues, according to the true value of the same; and if any lands and

(b) See this same case in question. 9 H. 6. 9.

tenements remain to him the said I. besides the manor aforesaid, then what lands and tenements, and where and of whom, or of what persons they are holden, to wit, whether of us, or of any other; and if of us, then by what service, and how and in what manner; and if of any other, then of whom, or of what persons, and by what service, and how and in what manner, and how much they are worth by the year in all issues. And the inquisition thereof, &c. distinctly and openly, &c.

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And if the king grant a licence unto his tenant who holdeth of him *in capite* to alien unto another in fee, and to take back an estate unto him and his wife, and unto the heirs of their two bodies begotten from the same alienee; and for default of such issue, the remainder unto another in fee-tail; and for default of such issue, the remainder to the right heirs of the first donee; he in that case shall have a writ of *ad quod damnum*, &c. to inquire, &c. and yet such writs are not used to be sued on upon such licence.

There is another writ in the Register, that if the king's tenant alien his lands, of which a woman holdeth part in dower for term of her life, and another holdeth other parcel thereof for term of her life, and he himself holdeth the residue in fee: now he shall have a writ of *ad quod damnum*, rehearsing all the estates in the grant of licence. A

If the king grant lands to one for life, and afterwards grant the reversion to *D.* in fee, and then *D.* die and his heir grant the reversion to *R.* and *W.* in fee, and afterwards *R.* and *W.* grant the reversion to *M.* for life, and all those grants are made without licence, and afterwards *M.* sue to have a licence, that she may enter after the death of the first tenant for life; she shall first have a writ of *ad quod damnum*, to inquire, &c. and the writ shall be such: B

The king to his beloved clerk F. of C. his escheator in the county of C. greeting: M. hath besought us, that, whereas A. heretofore granted, that one messuage, with the appurtenances in N. (which is holden of us in chief (as it is said,) and which I. and B. his wife, hold for the life of her the said B. of the demise of the said A. which also after the death of her the said B. ought to revert to the aforesaid A. and his heirs) after the death

death of the said B. should remain to D. and his heirs; and F. the son and heir of him the said D. further granted, that the messuage aforesaid with the appurtenances, (which ought to revert to him the said F. and his heirs, by reason of the grant and attornment to him in this behalf made) after the death of the same B. should remain to R. and W. and their heirs; and they the said R. and W. granted, that the messuage aforesaid with the appurtenances, (which ought to revert to them the said R. and W. and their heirs, after the death of the said B. by reason of the grant and attornment aforesaid to them made of the premises,) should remain after the death of the said B. to the said M. for her life, so that after the death of the said M. that messuage with the appurtenances, after the death of the said B. should remain to K. and the heirs of him the said K. our licence hereupon not being obtained: we would grant to her the said M. that she may enter the said messuage with the appurtenances, after the death of the said B. and hold the same for her life, of us and our heirs, by the services thereof due and accustomed, so that after the death of her the said M. the said messuage with the appurtenances, may remain to the said K. and the heirs of the said K. to be holden of us and our heirs, by the service aforesaid, for ever: we being willing to be certified by you, whether we may (in this behalf) assent to the prayer aforesaid, without damage or prejudice to ourselves, or any other person whomsoever, command you, that by the oath of, &c. (as above, until) or of others, if we grant to the said M. that she may enter and hold the messuage aforesaid, with the appurtenances, after the death of her the said B. in form aforesaid, or not? And if, &c. (as before.)

And by this it appeareth that an *ad quod damnum* shall be awarded, where the king granteth a licence unto one to enter into the land, which land the king might grant for a fine for alienation. And also it appeareth by it that a clerk being a chaplain was then escheator of the county.

- C And if B. the king's tenant alien to A. in fee, and afterwards A. give back the same lands to the same B. and C. his wife in tail, and then A. die, and then B. die without heir of his body, and afterwards D. brother and heir of A. release all his right in the land unto C. who was the wife

wife of *B.* in fee without the king's licence, if the king will pardon the trespass of making this release, a writ of *ad quod damnum* shall be awarded to inquire what damage or prejudice the same will be to the king, and the writ appeareth in the Register; but such writs are not used to be sued forth at this day, but pardons are allowed for the tenant, without any such writ of *ad quod damnum*, &c. But yet if the king be damnified by any such pardon, in any point whereof he had notice; whether the same shall make void the pardon or not, *Quære*.

And if the king will grant to one to make a ditch of a certain length in his own land, adjoining to the king's pond, to draw the water from the pool by the ditch to his mill, rendring yearly to the king and his heirs a certain rent, a writ of *ad quod damnum* shall be awarded to inquire what damage the same will be to the king, and the writ shall recite the grant, and the rent reserved. D

And if there be an ancient trench or ditch coming from the sea, by which boats and vessels use to pass to the town, if the same be stopped in any part by the outrageousness of the sea, and a man will sue to the king to make a new trench, and to stop the ancient trench, &c. he ought first to sue a writ of *ad quod damnum*, to inquire what damage it will be to the king or others. E

And if the king would grant to any city the assise of bread and beer, and the keeping of weights and measures, an *ad quod damnum* shall be first awarded, and when the same is certified, &c. then to make the grant. F

And it appeareth by the Register, that upon every grant to be made by the king, of lands, tenements, liberties, or other things, a writ of *ad quod damnum* shall be first directed to the escheator, to inquire what damage it will be to (a) the king or others; and in those writs in the Register, appear notable forms of grants made in divers manners; for

(a) *Note*; If the king grants liberties; as a market, fair, &c. to the king's nuisance, after the king has lost any profit, he may have a *scire facias*, and repeal the patent, and recover

all the profits taken by the patentee in the mean time, *per cur.* 11 H. 4. 5. See 16 Ed. 3. Grants 53. what liberties the king may grant, *Vide post.* 230.

in every writ the manner of the king's grant, and the effect thereof is specified and recited in the writ of *ad quod damnum*.

A And if a man would give lands unto the king in fee, to the intent that the king shall give them to a religious house, yet a writ of *ad quod damnum* shall be directed to the escheator to inquire what damage it will be to the king, or others, if the king should accept thereof, and give the same to the religious house.

B And if the king seizeth lands aliened in mortmain, and afterwards will give them again to the abbot, &c. in fee, yet a writ of *ad quod damnum* shall be awarded, to inquire to whose damage it will be, &c.

And so if an abbot purchaseth lands without licence, and afterwards the king would pardon him for the purchase, and grant that he may retain and keep the lands, yet an *ad quod damnum* shall issue to inquire, &c.

C And if the king's tenant alien without licence, for which the king seizeth the lands; if the king will restore the lands, and pardon the trespass, yet the writ of *ad quod damnum* shall issue forth to inquire what damage it will be to the king, if he make such grant; but that is not in use at this day; but to pay a fine, and upon the licence to enter, without suing such writ.

If the king be lord, and there be mesne and tenant, and the tenant hold of the mesne by homage and twenty shillings, and the mesne hold of the king *in capite*, and afterwards the mesne release unto the tenant the twenty shillings, to hold to him and his heirs by homage, and a penny, without the king's licence, the king may seize those services; and if he will by his grant make restitution to the tenant paravail, an *ad quod damnum* shall be granted, to inquire to whose damage, &c.

D And it appeareth by the Register, that if the king's tenant intrude after the death of his ancestor without suing his livery, if the king will pardon the intrusion, yet a writ of *ad quod damnum* shall issue to inquire to whose damage the king's pardon shall be, &c.

If

Writ of Ad quod Damnum.

If a forester of the king's forests, who holdeth his office of the king, granteth the same to another, he ought to have the king's licence; and before such licence shall be granted a writ of *ad quod damnum* shall issue, what damage such licence will be to the king, E

And so if the king would license one to cut down his trees or his wood in his forest, and to make assart of the wood, or to put it to tillage, a writ of *ad quod damnum* shall be awarded, as appeareth by the Register. F

And if the king would grant parcel of his waste within his forest to another in fee, rendring rent, and that the feoffee may inclose the same with a hedge or a ditch, &c. a writ of *ad quod damnum* shall be awarded, to inquire to what damage of the king or others the said grant will be. G

And if he would lease the same for years, rendring rent, a writ of *ad quod damnum* shall be awarded to the keeper of the forest, to what damage of the king or of his forest the same will be.

And if the king would grant part of his free chase to one in fee rendring rent, and that he may inclose the same with hedge and ditch, &c. a commission shall be directed to certain persons, to inquire what damage to the king or others the same will be, &c. and thereupon a writ shall be directed to return the inquest and panel before the commissioners at a certain day assigned by the commissioners; and the commissioners shall make a precept to the sheriff to do the same, and to return them at the day appointed by them by their precept.

And now it (a) appeareth by those words in the Register, that in ancient times, upon every grant, lease, release, confirmation or licence to be made by the king, a writ of *ad quod damnum* was first to be awarded, to inquire of the whole truth and every circumstance thereof, and what H

(a) See 2 Ed. 3. 6. 16 Ed. 3. *Brief* interests of other persons are prejudiced; the king is supposed to be deceived, and the patent shall be repealed in a *scire facias*.
651. *Grants* 53. That if a patent of liberties be made without inquiry by *ad quod damnum*, by grant whereof the

damage or prejudice the king would have by the same; and upon such inquisition certified and returned, to make the grants, releases, confirmations or licences.

But now the experience is contrary, but in the patents of grants of licence, they put in the end these words:

And this without any writ of ad quod damnum, or any other writ, or inquests, or commands, thereupon, to be had, done, or prosecuted, &c.

But in patents of licences, or in a patent of release or confirmation made by the king, these words *without any writ of ad quod damnum, &c.* are not in those patents of releases or confirmations: but yet by reason of the ancient course and form of the Register, it seemeth that the patents were the better if these words, *and this without any writ of ad quod damnum*, were put into the patents. *Quere* of the rigour of the law, what shall be done in those cases where the patents want those words, &c.

Writ of being quit of Toll.

I **W**HERE the citizens or burgessees of any city or borough have been quit of (a) toll throughout the realm by grants of the king's progenitors, or by prescription; then if such citizens, or any man of such cities or boroughs, come with their merchandises unto any fair or market, and there sell them, or buy any merchandise, if the king's officer will demand toll of them against the king's charter or against the usage or custom, they may sue forth and have this writ; *viz.*

1. H. Bl.
206. 4
Term Rep.
130.

(a) See 30 Ed. 3. 15. where is a writ against the king's bailiffs, and common farmers in taking toll, &c. For taking and detaining goods, &c. contrary to the law and custom of the realm, to the wrong and despight of

the king, and prejudice of his farm, and to the damage of the plaintiff.

Note; The prescription ought to be in the affirmative, *viz.* to be quit of toll, and not that he had not paid toll, 14 H. 6. 12.

(b) *The*

(b) *The king to his bailiffs of I. greeting: whereas we granted by our charter to the burgeses of our town of S. that they and their heirs and successors, burgeses of the same town, should be for ever quit of toll throughout our whole realm and dominion; we command you, that you permit those burgeses to be quit of yielding toll to you in our said town, according to the tenor of our charter aforesaid, not molesting or in any wise aggrieving them contrary to the tenor thereof. Witness, &c.*

And upon that they may have an *alias*, a *pluries* and attachment against the bailiffs, or those that grieve them against the form of the charter: and the *pluries* is returnable in the king's bench, or in the common pleas, at the will of him who would have it. And in this writ shall be the clause, *or signify the cause to us.*

And if the grant to be quit of toll be of the grant of the king's progenitors, then the form of the writ is such:

The king to the bailiffs of I. of E. greeting: whereas amongst other liberties granted to the burgeses (c) of our town of C. by the charters of our progenitors some time kings of England, it is granted to them, that they and their heirs for ever should be quit of toll throughout our whole realm, which charters we have already confirmed by our charter, and have moreover granted to them, that although they have not fully used any of the liberties and quittances contained in the same charters until this present

(b) Toll-traverse lies in prescription, but not toll-through; for it is an oppression of the people, 22 *Aff.* 58. yet see a common person may prescribe for toll-through, if he shews a reasonable cause, and prove that the country has a recompence, 14 *Ed.* 3. *Bar.* 275. 5 *H.* 7. 10. and so the king may prescribe for toll-through; *quere*, if without shewing cause. 11 *H.* 6. 39. *vide infra.*

(c) *Note*; Toll-traverse may be by prescription or grant; but toll-through cannot be by either grant or prescription. 22 *Aff.* 58. 20 *Ed.* 3. *Toll* 3. *Note*; Toll-through is in the highway, but toll-traverse is for passing over

another's land; yet it seems if a highway be in a city or town, toll-through may be there by prescription, 5 *H.* 7. 10. 13 *H.* 4. 15. and pontage, murage or ferry may be demanded in a highway by the king's grant, but not in a private way, 13 *H.* 4. 15. and see there that the king may grant tronage, and good; and *Note*; every new office ought to be proclaimed as well as granted. *Ibid.*

Note; If the king grants to one to be quit of toll, this does not extend to custom, as it seems, nor is it any bar to a demand of toll by them who have toll by a prior grant made to them. 39 *Ed.* 3. 13. See 18 *Ed.* 1. *Lib. Parl.* 10. time;

time; nevertheless they, their heirs and successors for the time to come, may enjoy and use the liberties and quittances aforesaid, and every of them, without disquietude or hindrance; we command you, &c.

C But this last clause shall not be in the writ, if the king have not made such confirmation to them: and upon this there may be an *alias* and a *pluries*, and an attachment, if need be, against those who take the toll, &c.

D And the like writ may be for those who ought to be quit of murage, pontage, picage, lastage, passage, and the like, if they be grieved or disturbed.

And it appeareth by a writ in the Register, that king Edward the First did grant unto merchants, strangers and aliens, that they should be quit of murage, pannage and pontage, &c; if they are grieved and disturbed for the same, they shall have such writ; viz.

The king to his collectors of murage, pannage and pontage in the town of S. greeting; Whereas in consideration of the payments and customs to us by merchants, strangers and aliens, of their goods and merchandises brought into our realm, it is granted to them by the charter of lord Edward of renowned memory, some time king of England, our grandfather (which we have inspected) that they shall come safely and securely into our realm and dominion with their merchandises whatsoever, and be free and quit of murage, pannage and pontage as in the said charter is more fully contained; we command you, that you permit B. and his companions, merchants of the company of, &c. aliens, to be quit of yielding murage, pannage and pontage in the said town, according to the tenor of the said charter, not molesting or in any wise aggrieving them contrary to the tenor of the same; and release to them the distresses without delay (if you shall have made any upon them on that occasion) and if you shall have levied any thing upon them since the 20th day of August in the year, &c. on that occasion, restore it to them without delay. Witness, &c.

E And where any city or borough ought to be quit of toll for the merchandises which they buy in another town or place, if any of them be compelled to pay toll, all the corporation may bring this writ by their corporate name, and may have an *alias* and attachment thereupon, if need

need be, with these words at the end of the writ, *and the distress, if any shall be made upon them on that occasion, &c. as before.*

And the like writ a man may have against those who will compel him to pay a certain sum of money towards reparation of any bridge, of which he ought to be quitted.

And it appeareth by the Register, that spiritual and religious persons ought to be quit of toll, customs, murage, pontage and pannage, and of the like, for their goods; and if they be troubled to pay the same, they shall have the following writs:

The king to his bailiffs of B. greeting: whereas ecclesiastical persons, according to the custom hitherto used and approved in our realm (a), are by no means bound to yield toll, pannage and murage of their ecclesiastical goods any where in the same realm; we command you, that you do not distrain R. parson of the church of E. to yield to you toll, pannage or murage of his ecclesiastical goods in our said town, contrary to the said custom; yet so that he do not exercise any merchandise with the same; and the distress, if any, &c.

But Herle justice said, that these words, *dum merchandisas aliquas, &c.* were of no effect, because, by his opinion, they are quit of all things, although they do merchandize: But now the statute of H. 8. is, that they shall not merchandize.

And another form of writ for spiritual persons is in this form:

[228] *Whereas according to the custom, &c. obtained, ecclesiastical persons ought not to yield any toll or other custom of their ecclesiastical goods, or of other things bought for their sustenance; we command you, that you by no means distrain A. parson of, &c. to yield any toll or other custom of his ecclesiastical goods sold, or of others bought for his sustenance, contrary to the custom aforesaid; and the distress, if any, &c. (as above).*

(a) See Rot. Parl. 8 Ed. 2. m. 4. *super petition' decan' & capitul' Lincoln' esse quiet' de paviagio. Resp' quod si ipsi vel famuli sui juvandi studio mercaturas exerceant solvant inde paviagium prout decet.*

A By which writs it appeareth how spiritual persons shall be discharged of those tolls, impositions and exactions for their goods which they sell or buy for their sustenance, &c.

Tenants of ancient demesne by the custom of the realm ought to be quit of toll, &c. in every market, fair, town or city throughout the realm; and therefore every one of them may sue to have letters patent under the king's seal, to all the king's officers, and to mayors, bailiffs, &c. and the form of the patent is such:

The king to all bailiffs and ministers wheresoever appointed within our realm of England, greeting: whereas according to the custom, &c. (as above, till) throughout our whole realm; we command you, that you by no means distrain the men of our manor of S. (if that manor be of the ancient demesne of the crown of England) to yield toll to you, &c. according to the said custom; and the distress, (if any) &c. In witness whereof, &c. Witnesses, &c.

And also the tenants of ancient demesne may have a writ directed to the bailiffs or mayor, or others who will compel them to pay toll, that they suffer them to go quit, &c. and the form of the writ is such:

The king to his bailiffs greeting: whereas according to the custom of our realm hitherto, &c. obtained and approved, the men and tenants of the ancient demesne of the crown of England are and ought to be quit of yielding toll throughout our whole realm; nevertheless you grievously distrain the men and tenants of the manor of S. which is of the ancient demesne of the crown of England, as it is said, to yield toll to you of their goods and things in the said town, and many ways unjustly disquiet them upon that occasion, to the great damage of them the said men and tenants, and contrary to the custom aforesaid, as we have received information from their complaint; and we willing that no injury be done to those men and tenants, command you, that (if it be so) then desisting for the time to come from bringing such distresses and disquietudes upon the said men and tenants on that occasion, you permit them to be quit of yielding such toll to you of their goods and things aforesaid in the same town, according to the custom aforesaid, and the distress; if any, &c.

Writ of being quit of Toll.

And by the writ aforesaid it appeareth that tenants in ancient demesne shall be quit of toll, as well those who hold of a manor which is ancient demesne, and in the seisin or possession of another man, than of the king, as those who hold of a manor in ancient demesne, which is in the king's hands and possession.

And it appeareth also, that they shall be quit of toll for their goods and chattels which they merchandize with, as well as for their other goods; for the writ is general, *pro bonis & rebus suis*.

Supra 15.

And it appeareth that this writ may be sued by all the tenants, as a writ of *monstraverunt* shall be sued; and also that every particular person who is grieved may sue forth the writ, if he will. B

And the lord (a) in ancient demesne himself shall be acquitted of toll throughout the realm, as well as the tenants in ancient demesne; and this appeareth by the Register, where there is an attachment sued by the lord of the manor in ancient demesne against the bailiffs of C. because they took toll of him. And he shall be quit, not only of toll, but also of pontage, passage, and the like.

Nor shall such persons be contributory to the expences of the knights in parliament; and if the sheriff distrain them, or any of them, to be contributory for their lands in ancient demesne, then they may sue forth a writ directed to the sheriff, that he do not compel them to be contributory to the expences of the knights, &c. commanding him in the same writ, that if he have distrained them or any of them, he re-deliver the distress, &c. and the writ may be sued by all together, as a *monstraverunt* or by any of them who are distrained. C

And tenants at will within ancient demesne shall be discharged of toll, as well as the free tenants, or tenants for term of life, or for term of years of lands in ancient de- D

(a) Note; It does not appear by this writ, what was ancient demesne, See Register 260. accordant, N. B. 2 Lutw. 1145, 1146.

mesne,

mesne, shall be discharged of toll for their goods, &c. 9 H. 6. 14.

E And (b) see 7 H. 4. that a tenant in ancient demesne may merchandize, buy and sell, and shall not pay toll: and the same agreeth with the Register. But T. 9 H. 6. it is holden, that they shall not pay toll of things coming of their tenements within ancient demesne, nor for things bought for their sustenance, &c. but for other things it is a question: but forasmuch as they shall be quit of pontage murage and passage, I conceive that they shall be quit of toll generally, although they merchandize with their goods. And the toll ought always to be paid by the buyer, and not by the seller; unless it be by some special custom, &c.

19 H. 6. 66.
Newton.

F And the villains of lords who come to parliament shall not be contributories to the expences of the knights of the counties who come to the parliament; but the lords shall have letters in their own names directed to the sheriff, commanding him that he do not distrain their villains to be contributory to those expences of the knights, and if he hath distrained them, to deliver the same to the said villains.

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And it seemeth reasonable that the villain may, if he will, sue the writ, as well as the lord, &c. which writs appear amongst the writs to be quit of toll.

(b) The case, 7 H. 4. 44. In trespass against A. *Quod telonium asportavit, & illud solvere recusavit*, (it was held that the writ was good, and the first words as to the *asportavit* void): The plaintiff counts, that the defendant had bought twelve beasts in his market, and that he came the next market in the next week, and sold six of the beasts (oxen) and the other six at a fair there held at the feast of, &c. defendant pleads that he is a tenant of ancient demesne, &c. and that all those tenants have been free to buy and sell beasts for manuring their lands, &c. without toll, &c. time out of mind, and that he bought *ut supra*, and some he used for manuring his land, and

some he put to pasture, to make grasses, and after convenient time sold them, &c. the plaintiff offers to aver, that he bought the beasts to re-sell them, and that he re-sold them *ut supra*; the defendant demurs; but the opinion of the Court being against him, he became nonsuit: So that it seems for things bought for their sustenance, or manuring their lands, or concerning husbandry, they are discharged, but not to merchandize; and the merchandize of these is different from other merchandize. See 9 H. 6. 15 and 66. 3 Ed. 3. (Toll) 138.

See goods of the vendor distrained for toll. 20 Ed. 3. *Avowry* 129. See 9 H. 6. 45.

U 2

And

Writ of being quit of Toll.

And also chaplains who are masters of the chancery, A and are attendants at parliaments, shall not be contributory by reason of their benefices unto the expences of proctors made for the clergy who come to the parliament; and if they are made so, they shall have a writ to the archdeacon and his officers, commanding them to discharge them, and upon that they may have an *alias* and a *pluries*, and attachment against them; and the writ is such:

The king to the archdeacon of Middlesex and his official, and to their commissary, greeting: whereas in our parliament called together at Westminster in the fourth year of our reign, it was there agreed by us, and by the prelates, earls, barons, and our whole council, that our beneficed clerks of the chancery personally attending in our parliament, councils and treaties, for the service of us and the people of our realm, are to be quit from contributing, by reason of their benefices, towards the expences of the proctors of the clergy of any diocese, they coming by our command to such parliaments, councils and treaties: we willing the said agreement to be kept inviolable in all things, especially with respect to paying towards the expences aforesaid, by reason of the absence of those who were not at the said parliaments, &c. command you, that you by no means compel, or any wise permit to be compelled by your ministers, T. parson of the church of N. in the diocese of London, who is a clerk of our chancery, and who was present in our last parliament held at Westminster, in the service of us and the commons of our people, to contribute, by reason of his benefice, to the said expences of proctors who came to the said parliament for the clergy of the said diocese, or of other proctors who shall happen to come to other parliaments, &c. by us now to be holden, while he shall attend such services, but cause him to be quit of such expences, according to the agreement aforesaid; and if any thing have been levied upon him on that occasion, restore it to him without delay, and also cause the processes to be superseded (if any have been made towards ecclesiastical censures against him for the cause aforesaid) and the sentences to be revoked (if any have been fulminated against him). Witness, &c.

Quare

Quære for that statute : But by this it appeareth, that the parliament may bind the clergy by the acts and statutes made in parliament.

(a) *Writ de Libertatibus allocandis.*

B **W**HEN any citizen or burghers, or other man, is impleaded before the king's justices, justices itinerant or justices of the forest, and he claimeth and pleadeth

(a) *De Libertatibus allocandis.*

Note; Liberties may be allowed in the time of the king who granted them, without any writ of allowance. See 2 H. 5. 4. 34 H. 6. 54. For allowance of liberties, see 14 H. 6. 12.

If the king grants conuſance of pleas, or to be discharged from ſerving on juries, &c. he ſhall have no advantage of it without ſhewing it in allowance. 39 Ed. 3. 15.

What Liberties the King may grant.

Regularly he cannot grant ſuch liberties as are prejudicial to the ſubject, without the aſſent of parliament: *Note* the caſe of *John Marſhall*, viz. The king granted to one J. S. the meaſuring of cloths, canvas, &c. bought and ſold in L. as well between others, as between citizen and citizen, for a certain ſum, &c. J. S. dies, the king grants the ſame office to J. M. and a writ iſſued to the mayor and ſheriffs of *London* to receive him; and at the *ſcut alias* it was returned, that there was not any ſuch office in the city, &c. and ſome for the king ſurmiſed the contrary; whereupon a *pluries* and an attachment iſſued, and on the return the matter aforeſaid was ſhewn to the Court, &c. And it was reſolved, 1. That forasmuch as the ſaid officer was a charge to the ſubject, for

he took certain fees from the people (where they had an aulnager before) that as the firſt grant was void, and that what he took was extortion, and not as an officer; ſo on the new patent to J. M. the mayor might well return that there was not any ſuch office. *Ratio*: For if the mayor and ſheriffs could not make ſuch return, they would be eſtopped by their admittance, to ſay it afterwards, although ſuch admittance by the mayor and ſheriffs ſhould not work any prejudice to another. And ſo there is a diverſity, when the office granted by the king has an intereſt or charge, by reaſon of the matter or thing granted, there they may return the matter, &c. although it goes in bar of the king's title; *contra* if the officer hath nothing to do with the matter, but only as officer, without charging the ſubject; and accordingly it was adjudged: and it was then ſaid by *Gafcoign*, that the king may charge his people, without aſſent of the commons, in a thing that is for the good or profit of the people; as he may grant pontage, murage or a ferry; but if the king grants murage to ſuch a town, where I and my tenants have paſſage through the town; though ſome of my tenants pay the cuſtom, yet I may forbid the extorting of it. 12 H. 4. 87. 13 H. 4. 14, 15. See the office of brocage not grantable by the king.

eth any grant of liberty made unto him by the king, or unto any city or borough whereof he is a burgesse, and the justices delay to allow that liberty; then he who is so delayed by the said justices, may sue forth this writ directed to the justices, commanding them to allow the same; and the writ is as follows:

The king to his justices of the bench, greeting: because our burgesse of N. by the charters of our progenitors, some time kings of England, claim to have divers liberties which they and their predecessors burgesse of the same town have always hitherto, from the time of the making of the said charters, used and enjoyed, as they say; we command you, that you permit them the said burgesse, in the bench before you, to use and enjoy the liberties aforesaid, according to the tenor of the charter aforesaid, as they ought to use and enjoy them, and as they and their predecessors have always, from the time aforesaid, hitherto been accustomed reasonably to use and enjoy those liberties. Witness, &c.

And if any claim a special liberty to be impleaded within the city or borough, and not out of the city, then the writ shall be special, thus:

The king to the same, greeting: whereas amongst other liberties which for the improvement of our town of R. are granted by the charters of our progenitors some time kings of England, to the burgesse of the same town, it is granted to them, that they shall not implead or be impleaded any where else than within the said borough before, &c. of the same town, touching any tenures therein, or trespasses and contracts committed or made within the same borough, as in the charters aforesaid is more fully contained; which liberty they the said burgesse and their predecessors burgesse of the same town, from the time of making of the charters aforesaid always hitherto have reasonably used, as they say: we command you, that you permit them the said burgesse before you to use and enjoy the liberty aforesaid, according to the tenor of the

king. 21 Ed. 4. 79. Rot. Parl. 13 H. 4. m. 43.

As to the king's grant of tolls, &c. vide ante 227. And note: every new office ought to be proclaimed as well as granted. 13 H. 4. 15. If the king grants to one to be quit of escape, this cannot be intended voluntary escapes.

3 H. 7. — The king cannot by his patent discharge one who is bound by prescription to make or repair a bridge; but of contribution to a bridge he may discharge, *ut videtur*. Quere 3 Ed. 3. Aff. 445. but he may discharge a fine for it. 37 H. 6. 4.

char-

charters aforesaid, as they ought to use them, and as they and their said predecessors from the time aforesaid always hitherto have been accustomed to use and enjoy them. *Witness, &c.*

And every one who claimeth any liberty, and justifieth by the same any act done by him in any court before any manner of justice or justices, if the justices will not allow that liberty, or delay to allow the same, may sue forth this writ. And those writs are of several forms, as appeareth by the Register, and may be sued by a body corporate or by a single person, as the case shall happen, &c. And the barons of the cinque ports may sue forth such writs, if they be delayed to have their liberties allowed unto them.

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And the like writ may be sued to the justices of the forest, commanding them to allow charters granted to any persons, to have pasture, or to be quit of pannage there.

Writ de Corrodio habendo.

A THE writ *de corrodio habendo* lieth, where the king is the founder in the right of his crown of any abbey (a) or priory, or other religious house. Now of common right the king ought to have a corody, and a reasonable allowance for any of his vadeleets in the same house. And so of every bishoprick in *England* and *Wales*, the king ought to have a reasonable pension for his chaplain, until the (b) bishop have promoted him to a convenient benefice. And the form of the writ for the corody is such :

1 Ed. 4. 10. So every common person, if he be founder, and doth not give in frankalmoine: 44 Ed. 3. 24. and 50 Ass. 6. Vide 21 Ed. 4. 8. That the king writ for his vadeleet by his prerogative, by which Br. collects, that a

founder, common person, shall not have a corrody.

14 H. 6. 11. If the king found a frank-chapel, he shall not have a corody or pension:

(a) It seems, if the king founds an abbey to hold of an honour, he shall not have a corody. *Quere* 24 Ed. 3. 72.

(b) This is due from every bishop of common right, and cannot be discharged by prescription. 9 Ed. 4. 40, &c. There the bishop of St. David's was charged, that he had alleged, 1. That it was of the foundation of the prince of *Wales*, and that the avoidance belonged to the principality; whereto it was answered, that before the conquest that principality was held

of the king as of his crown; and by forfeiture of the prince of *Wales* became re-annexed to the crown with all patronages of the bishoprick. 2. That although the principality was given to the prince, yet for that the bishop had sued the temporalities out of the king's hands in chancery, he was chargeable to the king. 10 H. 4. 6.

See a corody for a feme in the priory of *Bermondsey*. *Lib. Parl.* Ed. 1. 193.

Writ de Corrodio habendo.

1 Ed. 4. 10.
The writ ought
to contain the
king's title to the
corody.

The king to his beloved in Christ the prior and convent of N. greeting : we, willing that for our beloved valet of S. fit corody be provided have commanded him to be sent to you, requiring that, admitting him the said S. into your said house. such corody be administered to him in all things, as P. now deceased had while he lived in the same, and cause to be made and delivered to him upon this occasion your letters signed with the common seal of your house, making mention of those things which he shall so receive in your same house, for doing which for us we will be especially bound to your house for the future ; and what you shall order to be done upon this our request write back again to us by the bearer of these presents. Witness, &c.

There is another form of writ, where the king writeth B
for the servants of his grand father or father thus :

The king to the same : we regarding the acceptable and laudable services which our beloved servant A. hath hitherto done to our grandfather and us, who willing for him the said A. (who is not yet provided for of his maintenance by them our grandfather or father, or by us) to provide such support as we are bounden, have commanded him to be ordered to you, requiring that, admitting him the said A. into your said house, you administer to him such (corody or) support, both in victuals and clothing and other necessities, as R. lately deceased had by the command of our grandfather, to be perceived in your said house, and cause to be made and delivered to him on this occasion your letters patent, &c. (as above).

Note; If an abbey which a common person hath cometh to the king by escheat; yet he shall not have a corody, because it is not of his foundation. L. 5 Ed. 5. 118. Br. Corrod. 1. 6. Yet the king may have a corody where he is not founder, but that is by special grant. 1 Ed. 4. 10.

38 Ed. 3. Br. Contemp. 5, and 39 H. 6. 48. If the abbot will not admit the king's vadelet, he who ought to be admitted shall recover damages, and not the king, for that the king hath only the presentation to the corody, and the party the damages.

44 Ed. 3. 25. per Knevit, if the king and another give land to erect, &c. the king is founder.

And so where the king is founder C
of any abbey or priory of nuns, the king shall have a corody for the queen's maidens or others of her cousins, for whom he pleaseth to write, &c. but if the king will write unto an abbey of monks, for a maid to have a corody there for her sustenance, &c. it seems the same shall not be obeyed, for the inconveniency thereof ; nor contrary, if he write to a nunnery for his vadelet to have a corody there : *tamen quære.*

There

D There is another form of writ, thus :

The king to his beloved and faithful the abbot and convent of B. greeting : we willing of our special favour for our beloved valet R. by reason of his good service to us done and to be done, for whom fitting support is not yet, &c as above.

(a) And upon these writs, if the abbot or prior will not do as he is directed to do by the writ, an *alias* and a *pluries* shall be awarded, or signify the cause to us shall be in the writ of *pluries*, and shall be returned unto the king's bench ; and if he do not return the same, an attachment shall be awarded against the abbot, prior or prioress.

E And if the king write for such corody unto an abbey or priory, and they grant parcel of the corody unto him for whom the king writeth, but not all, nor so much as others

22 Ed. 4. 17, 18, 19. Hufsey and Fairfax. If an abbot grant to A. to have a corody, nihil operatur by the grant : but if he grant a corody, or so much bread and ale, &c. it is a good grant of those things, but it is no corody, but a profit ; for every corody hath his beginning by the foundership.

had before ; then the king, upon a surmise thereof made in the chancery, shall grant a writ of *scut alias* directed unto the said abbot or prior, &c. desiring them that they grant the like livelihood in all things as any other hath had before in the same house. And if the ab-

bot or prior upon the *pluries* return any matter of excuse, wherefore he ought not to grant such corody, which return seemeth unto the court where the return is made, be it in the chancery or in the king's bench, to be no sufficient return, then the king shall grant such writ :

The king, &c. greeting : whereas we being lately willing to provide for our beloved N. a fit support, by reason of his long service to lord Edward lately king, our grandfather, and to us

(a) If the abbot returns cause at the *scut alias*, and none comes on the king's part to counterplead the cause, the abbot shall be discharged. 11 H. 4. 81. But if any comes for the king, and counterpleads the cause, they shall not interplead thereon, but a *pluries* and an attachment shall issue and on the attachment they shall plead,

by Gascoign. 11 H. 4. 87. Note ; It, was *venire coram concilio*, and there the title of the patronage was in issue, and found for the king ; and adjudged, that the king should recover the patronage, and the temporalties be seized, for that they elected the prior without the king's leave, &c. 38 Aff. 12. Vide post. 231. B.

done,

done, sent him to you, and have oftentimes commanded you requiring you to admit him the said N. into your house, and grant to him such support, &c. and should make your letters, &c. or signify the cause to us wherefore you have not obeyed our commands so often directed to you thereupon, and you have sent to us in our chancery certain causes of excuse, which we think insufficient; therefore we command you, firmly injoining that you admit the same N. into your house, &c.

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And if an abbot or prior at the king's request grant a corody to B. for life, and afterwards B. will surrender the grant of his corody unto the abbot or prior, to the intent that C. have the same for his life, then he ought to sue a writ to the abbot or prior, thus :

The king to his beloved, &c. the prior and convent of R. greeting : whereas our beloved S. at our request obtained a certain corody in your said priory, and is willing that our beloved valet N. may have the whole estate which the same S. hath in the corody aforesaid, and for that purpose S. is ready to surrender to you the letters patent by you made to him of the said corody, as he says, beseeching us that we will vouchsafe to yield our assent thereunto; we regarding the prayer of him the said S. and moreover being willing to do the said N. a more abundant favour in this matter, command you requiring that if the said S. is willing to surrender the said letters to the purpose aforesaid, then having received those letters into your power, you admit him the said N. into your said house and grant to him to perceive of your said house the said corody for the life of him the said N. and cause to be made and delivered to him your letters patent for the said corody under the seal of your said house; and what you shall order to be done at this our request, writs back again to us by the bearer of these presents. Witness, &c.

19 Ed. 3.
Fines 50.

A fine was levied
of a corody.

10 Aff. 11. Br.
Corrod. 8. Nuper
obiit of a corody
and Dec' delibero
Tenem', quod

vide 14 H. 6. 11 and 12. Assise lieth of a corody, contrary of a pension.

And upon this he shall have an *alias* and a *pluries*, and attachment, if need be.

14 H. 6. 11, 12.

And if an abbot or a prior admit one to a corody upon the king's writ sent him, if he dieth who is so admitted, the king may write for another to have the same corody.

14 H. 6. 11.

But if the king have a pension in any abbey or priory for his chaplain, if the abbot, or prior, upon the king's letter grant a pension to his chaplain, and the chaplain die, the king cannot write

write for, or grant a new pension unto another chaplain during the said king's life; and if he do, the prior is not bound to grant the same; but it is otherwise of a corody.

14 H. 6. 11.
and 12.

And yet some say, that upon the cession of an abbot or prior, the king shall have a new pension granted to his chaplain; but *quære* of that.

14 H. 6. 12.

- C And if the king have a corody in an abbey or priory to have certain bread and certain gallons of beer, &c. the king may grant the same to several men; but where he hath a corody to have livelihood of one man, to sit with the servants of the abbot, there he cannot grant the same but to one man only. And the king may release to the abbot or prior his title to the corody, if he will.

8 Ed. 4. 17. ac.

14 H. 6. 11.
and 12.

8 H. 7. 12.

24 Ed. 3. 33.

15 Ed. 3. and

14 Ed. 3. and

24 Ed. 3. 33.

14 Ed. 3. Corody

Ed. 3. 24. ac.

7 and 4 Corrody 4 and 5. Co. Lit. 97. a. 50 Aff. 6. 44

- E (a) And if the abbot or prior receive one to a corody upon the king's letter, and thereupon make him a grant thereof; thereby the abbot or prior and their successors shall be bound for ever. Otherwise it seemeth, if the abbot had granted the same upon the king's request.

- F And *T. 4 Ed. 3.* it is holden, that the abbot or prior who holdeth of the king in *frankalmoigne* shall not be chargeable with any corody.

Writ de Annua Pensione.

- G AND when the king hath a yearly pension out of an abbey or priory for his chaplain, the king shall send his writ unto the abbot or prior, &c. to grant the said pension to his chaplain; and the writ shall be such:

The king to his beloved in Christ the abbot and convent of C. greeting: Whereas you by reason of your creation in the said abbey are bounden to one of our clerks (whom we shall be moved to name) in a certain yearly pension to be received of your house, until he shall be provided of a competent ecclesiastical benefice; and we

(a) See 18 Ed. 3. 2. *In libera capella regis*, although the king had before translated it to the priory and convent.

14 H. 6. 12. for the priory of Saint Bartholomew.

Writ de Annuâ Pensione.

desiring the promotion of our beloved clerk A. (from his merits requiring it) are moved to name him to receive such pension of you; therefore we command you, that you grant to him the said A. such pension to be received of your house in form aforesaid, as may become the givers, and may render the receiver more strongly obliged, hereupon causing to be made and given to him the said A. your letters signed with the seal of your chapter; and what you shall be induced to do thereupon, write back again to us without delay. Witness, &c.

And the form of the grant of the pension is such :

H

To all to whom these present letters shall come the abbot of T. and the convent of the same place send greeting, &c. Know ye that we, at the instance of the most illustrious prince Edward by the grace of God king of England, have given and granted to our beloved in Christ A. clerk, one hundred shillings sterling, to be received of our chamber in the feast of Saint Michael yearly until we shall have provided for the same A. a competent ecclesiastical benefice and this we promise to do for him as soon as an opportunity shall offer itself; but the said A. by himself or his proctor lawfully appointed for this purpose, may receive the said one hundred shillings every year at S. In witness, &c. we have commanded the common seal of our house to be put. Dated in our chapter, &c.

And it appeareth by an ancient roll in the exchequer, of what abbies or priories the king ought to have a corody and pension, and of what a pension only, and of what a corody only; the copy of which followeth :

The Names of the Corodies and Pensions in England which are of the King's Gift, according to the Book in the Exchequer.

I N the abbey of <i>Glassenbery</i> ,	-	1 C.	1 P.
In the abbey of <i>Mochelny</i> ,	-	2 C.	1 P.
In the abbey of <i>Tewksbury</i> ,	-	1 C.	
In the abbey of <i>Clive</i> ,	-	1 C.	1 P.
In the abbey of <i>Ford</i> ,	-	1 C.	
In the abbey of <i>Buckfast</i> ,	-	1 C.	
In the abbey of <i>Sherburn</i> ,	-	1 C.	1 P.
In the abbey of <i>Abbatisbury</i> ,	-	1 C.	1 P.
In the abbey of <i>Bewdley</i> ,	-	1 C.	1 P.
In the abbey of <i>Shaftsbury</i> ,	-	1 P.	
In the abbey of <i>Winton</i> ,	-	1 C.	1 P.
In the abbey of <i>Worwel</i> ,	-	1 P.	
In the abbey of <i>Hide</i> ,	-	1 C.	1 P.
In the abbey of <i>Battel</i> ,	-	1 C.	1 P.
In the abbey of <i>Waverly</i> ,	-	1 C.	
In the abbey of <i>Malmisbury</i> ,	-	2 C.	1 P.
In the abbey of <i>Sleveburn</i> ,	-	1 P.	
In the abbey of <i>Southwick</i> ,	-	1 C.	1 P.
In the abbey of <i>Susester</i> ,	-	2 C.	1 P.
In the abbey of <i>Stonley</i> ,	-	1 C.	
In the abbey of <i>Bristokom</i> ,	-	1 P.	
In the abbey of <i>Hurtey</i> ,	-	1 C.	
In the abbey of <i>Reading</i> ,	-	1 C.	1 P.
In the abbey of <i>Messenden</i> ,	-	1 C.	
In the abbey of <i>Gloucester</i> ,	-	2 C.	1 P.
In the abbey of <i>Langton</i> ,	-	1 P.	
In the abbey of <i>Pershore</i> ,	-	1 C.	1 P.
In the abbey of <i>Winchcomb</i> ,	-	1 C.	1 P.
In the abbey of <i>Osney</i> ,	-	1 C.	1 P.
In the abbey of <i>Tame</i> ,	-	1 C.	
In the abbey of <i>Dorcester</i> ,	-	1 C.	1 P.
In the abbey of <i>Abingdon</i> ,	-	2 C.	1 P.
In the abbey of <i>Evesham</i> ,	-	1 C.	1 P.
In the abbey of <i>Godstow</i> ,	-	1 P.	
		In	

Writ de Annuâ Pensione.

In the abbey of <i>Notley</i> ,	-	-	-	1 C.
In the abbey of <i>Southamp.</i>	-	-	-	1 C. 1 P.
In the abbey of <i>Lilfil</i> ,	-	-	-	1 C.
In the abbey of <i>Shrewsbury</i> ,	-	-	-	1 C. 1 P.
In the abbey of <i>Chester</i> ,	-	-	-	1 C. 1 P.
In the abbey of <i>Vale Royal</i> ,	-	-	-	1 C.
In the abbey of <i>Burton</i> ,	-	-	-	1 C. 1 P.
In the abbey of <i>Thorney</i> ,	-	-	-	1 C. 1 P.
In the abbey of <i>Ramsay</i> ,	-	-	-	1 C. 1 P.
In the abbey of <i>Peterborough</i> ,	-	-	-	1 C. 1 P.
In the abbey of <i>Crowland</i> ,	-	-	-	1 C. 1 P.
In the abbey of <i>St. Benedict in Norfolk</i> ,	-	-	-	1 C. 1 P.
In the abbey of <i>Bury</i> ,	-	-	-	1 C. 1 P.
In the abbey of <i>Tetfurther</i> ,	-	-	-	1 C. 1 P.
In the abbey of <i>Pipwel</i> ,	-	-	-	1 C. 1 P.
In the abbey of <i>Leiceſt.</i>	-	-	-	1 C.
In the abbey of <i>Newſted</i> ,	-	-	-	1 C.
In the abbey of <i>Pemfret</i> ,	-	-	-	1 C. 1 P.
In the abbey of <i>Worſtore</i> ,	-	-	-	1 C.
In the abbey of <i>Bliſh</i> ,	-	-	-	1 C.
In the abbey of <i>Waltham</i> ,	-	-	-	2 C. 1 P.
In the abbey of <i>Barking</i> ,	-	-	-	1 C.
In the abbey of <i>Tower-hill</i> ,	-	-	-	1 C.
In the abbey of <i>Bermondſey</i> ,	-	-	-	1 C.
In the abbey of <i>Chriſtchurchland</i> ,	-	-	-	1 C. 1 P.
In the abbey of <i>Feverſham</i> ,	-	-	-	1 C.
In the abbey of <i>Chirſey</i> ,	-	-	-	1 C.
In the abbey of <i>St. Mary in York</i> ,	-	-	-	1 C.
In the abbey of <i>Durham</i> ,	-	-	-	1 C. 1 P.
In the abbey of <i>Tinmouth</i> ,	-	-	-	1 P.
In the abbey of <i>Withy</i> ,	-	-	-	1 C. 1 P.
In the abbey of <i>Mewes</i> ,	-	-	-	1 C.
In the abbey of <i>Altney</i> ,	-	-	-	1 C. 1 P.
In the abbey of <i>Wardon</i> ,	-	-	-	1 C.
In the abbey of <i>Chriſton</i> ,	-	-	-	1 C.
In the abbey of <i>Selby</i> ,	-	-	-	1 C.
In the abbey of <i>Sparhall</i> ,	-	-	-	1 C.
In the abbey of <i>Dorſley</i> ,	-	-	-	1 C.
In the abbey of <i>Spalding</i> ,	-	-	-	1 C.
				In

In the abbey of <i>St. Auguſtine</i> in <i>Canterbury</i> ,	1 C.	1 P.
In the abbey of <i>Thornton</i> ,	1 C.	1 P.
In the abbey of <i>Twierdard</i> ,	1 C.	
In the abbey of <i>Noveyton</i> ,	1 P.	
In the abbey of <i>Coteſhall</i> ,	1 C.	
In the abbey of <i>Monmouth</i> ,	1 C.	
In the abbey of <i>Weſtminſter</i> ,	1 P.	
In the abbey of <i>St. Saviour's</i> in <i>Canterbury</i> ,	1 C.	1 P.
In the abbey of <i>Daventry</i> ,	1 C.	
In the abbey of <i>Criſtal</i> ,	1 C.	
In the abbey of <i>Stratford</i> ,	1 C.	
In the abbey of <i>Milton</i> ,	2 C.	
In the abbey of <i>Serne</i> ,	1 C.	1 P.
In the abbey of <i>Combe</i> ,	1 C.	
In the abbey of <i>Grenuby</i> ,	1 P.	
In the abbey of <i>Merival</i> ,	1 C.	1 P.
In the priory of <i>Bath</i> ,	1 C.	
In the priory of <i>Montagu</i> ,	1 C.	
In the priory of <i>Taveſtock</i> ,	1 C.	
In the priory of <i>St. Auguſtin</i> in <i>Briſtol</i> ,	2 C.	1 P.
In the priory of <i>Almsbury</i> ,	1 C.	
In the priory of <i>Stethorne</i> ,	1 C.	
In the priory of <i>Bradſlow</i> ,	1 P.	
In the priory of <i>Worceſter</i> ,	1 C.	
In the priory of <i>Sedſworth</i> ,	1 C.	1 P.
In the priory of <i>Dunſtable</i> ,	1 C.	1 P.
In the priory of <i>Royſton</i> ,	1 C.	
In the abbey of <i>Kennelworth</i> ,	1 C.	1 P.
In the priory of <i>Coventry</i> ,	1 C.	
In the priory of <i>Tutbury</i> ,	1 C.	
In the priory of <i>Ely</i> ,	1 C.	
In the priory of <i>Bedwell</i> ,	1 C.	
In the priory of <i>Norwich</i> ,	1 C.	1 P.
In the priory of <i>Lenton</i> ,	1 P.	
In the priory of <i>Seſword</i> ,	1 C.	
In the priory of <i>Merton</i> ,	1 C.	1 P.
In the priory of <i>Lewes</i> ,	1 C.	
In the priory of <i>Wenlack</i> ,	1 C.	
In the priory of <i>Wincheſter</i> ,	1 C.	1 P.
	In	

Writ de Idiota inquirendo & examinando.

In the priory of <i>Bordfly</i> ,	-	-	1 C.
In the priory of <i>Standeate</i> ,	-	-	1 C.
In the priory of <i>St. Andrew's</i> in <i>Northampton</i> ,	1 C.	1 P.	
In the abbey of <i>Bodmyn</i> in <i>Cornwall</i> ,	-		1 C.
In the abbey of <i>St. James's</i> in <i>Northampton</i> ,	1 C.	1 P.	

Writ de Idiota inquirendo & examinando.

Vide 236. D.

NOTE, That the king by the law, of right, is to defend his subjects, their goods and chattels, lands and tenements; and therefore in the law every loyal subject is taken into the king's protection; and if he be put out of the king's protection for his offence, then every man may do to him as against the king's enemy, and he hath no remedy for the same by the king's laws. (a) And because every man is within the king's protection, an idiot, who cannot defend or govern himself, nor order his lands, tenements, goods or chattels, the king of right ought to have in his custody, and to rule him and his lands and tenements, goods and chattels; and that appeareth by the statute of *Prærogativa Regis*, cap. 8.

Staundf. 34. 18
Ed. 3. Sci. fac.
10.

And therefore when the king is informed, that one who hath lands or tenements is an idiot, and is a natural from his birth; the king may award his writ to the escheator or sheriff, of the county where such idiot is, to inquire thereof; and the writ which shall be directed to the escheator shall be such:

The king to his escheator, &c. greeting: Because we have received information that I. of B. is foolish and an idiot, so that he is not sufficiently able to govern himself, his lands, tenements, goods and chattels, and that he in his foolishness hath aliened a great part of his lands and tenements, and also hath wasted a

(a) Note; If only a right of entry or action descends to an idiot, the king shall not have the custody thereof. 1 H. 7. 24. 29 Ed. 3. 43. Also the copyhold of an idiot is not within the ordering of the court of wards, but

the court of the manor. *Dyer* 302.

Note; The king has the custody of an idiot to his own use, not so of a lunatick; therefore his committee shall not have aid of the king. *Dyer* 25,

great

great part of his goods and chattels, to his own disherison and our manifest prejudice; we being willing to take care for the indemnity of him the said I. in this behalf, command you, that you go to him the said I. in your own person, and circumspectly examine him by such ways and means touching his condition, as you may best be informed; and nevertheless diligently inquire by the oath of honest and lawful men of your bailiwick, by whom the truth of the matter may be better known, whether the said I. be foolish, and an idiot, as is before said, or not; and if he be, then whether from his nativity, or from any other time, and if from any other time, then from what time, and how and in what manner, and if he enjoy lucid intervals, and whether he the said I. being in such condition, aliened any lands or tenements or not, and if so, then what lands and what tenements, and where, and (a) to whom and in whose hands the lands and tenements so aliened are, and how, and in what manner, and what lands, and what tenements so yet remain, and of whom, as well the lands and tenements so aliened, as the lands and tenements retained to himself are holden, and by what services, and how and in what manner, and how much they are worth by the year in all issues, and what his next heir and of what age: and the inquisition, **HERY AND** and openly made, send to us in our chancery under your seal and the seals of those by whom, &c. and this with **LAW SCHOOL**

A And there are two other manners of writs of another form in the Register, which are directed unto the sheriff, to go to such idiot, and to examine him, and to inquire thereupon. And the form of the writ which is directed unto the sheriff to inquire of an idiot, is such:

The king to the sheriff, &c. We command you, that by the oath, &c. you diligently inquire whether I. of B. the brother and heir of T. of B. was a perfect idiot from the time of his nativity always hitherto, by which the custody of his lands and tenements in C. ought to belong to us, or fell by misfortune or other manner into such infirmity afterwards, for which such custody ought not to belong to us; and if by misfortune or other

(a) And a *scire facias* shall issue against them. 18 Ed. 3. *scire facias* 10. 32 Ed. 3. *ibid.* 106.

Writ de Idiota inquirendo & examinando.

means, then by what misfortune, and how and in what manner, and of what age he was, and of whom the lands and tenements are immediately holden, and by what services, and who now holds them, and how much they are worth by the year in all issues, and who in the mean time hath received the issues thereof, and the inquisition thereof distinctly and openly, &c.

And there is a form of writ directed to the sheriff to inquire of idiots, which is much of such form as the first writ above is; and it is directed to the escheator to make the inquiry.

And although a man be found idiot by inquisition taken before the escheator, or before the sheriff, and by their examination, &c. and that be returned into the chancery; yet he who is so found ideot may in person, or by his friends, come into the chancery, or before the chancellor and the king's council, and shew the matter, and pray that he may be examined before the chancellor and the king's council, whether he be idiot or not; or he may sue forth a writ out of the chancery to certain persons, to bring him who is so found idiot before the king and his council to *Westminster*, to be there examined; and if he be brought thither and examined, and found to be no idiot, then the inquisition found before the escheator or sheriff, and also the examination which the sheriff hath made, and returned thereupon, shall be of no effect, but the same office shall be taken as void, without any other traverse, as it seemeth. And the writ which shall be directed to the party to bring the idiot before the king's council, shall be such:

16 Ed. 3. Livery
30.

The king to I. of T. greeting: Because we are given to understand, that R. your brother, the son and heir of B. deceased your father, is an idiot, and is not of sound mind, so that he is not sufficient to take care for the government of himself or his lands; we being willing to be certified of the condition of the said R. your brother, command you, firmly injoining that forthwith, upon sight of these presents, the said R. being in your custody, as it is said, without delay you cause to be brought before us and our council at Westminster, so that he may be there upon this instant Thursday, there to be examined before our same council,
and

and to do thereupon that which upon the advice of our council we shall command. And this you are in no wise to omit under the pain of one hundred pounds. Witness, &c.

B And he who shall be said to be a sot and idiot from his birth, is such a person who cannot account or number twenty pence, nor can tell who was his father or mother, nor how old he is, &c. so as it may appear that he hath no understanding of reason what shall be for his profit, or what for his loss: but if he hath such understanding, that he know and understand his letters, and read by teaching or information of another man, then it seemeth he is not a sot or a natural idiot.

Writ de Apostata capiend'.

WHERE a man (a), entereth into religion, and is professed, and afterwards leaveth his house, and is vagrant, and running about the country, against the rules of his order of religion; then the abbot or prior where he is professed may certify the same under his seal into the chancery, and pray to have a writ to the sheriff

(a) *Rot. Pat. 2 Ed. 1. M. 24.* A patent made for the procurator of the house of St. Anthony, to come and take up vagrant friars, *Et si fratres Et procuratores dict' dom' contingentes Et nomine fratrum prædictor' animalia Et bona petunt Et recipiunt*, and commanding to arrest all such as go about without a testimonial of the procurator, and to take such monies and goods, and deliver them to the said procurator; *Et si forsan literas regias datum præsentium præcedentes super admissione eorum ad hujusmodi eleemosynas colligendas prædicti procuratores testimonium legitimum non habentes exhibeant, minime parcatis, &c.*

See also 22 Ed. 3. 2. Trespass by the prior of these friars preachers and

A. his confrere for a battery of the said *A. ad dampnum prædict' prioris*, against the abbot of C. who pleads, that *A.* was a co-canon of his house, and that he sued to the king, who commanded that he should take him where he could find him; whereupon he took him, and carried him to prison. And by order of court he was put to confess that he was a *frere* of the plaintiff and demur, or else to traverse the matter alledged; whereupon he pleaded by a traverse, *absque hoc*, that he was *frere* of the plaintiff, and issue being joined thereon, a writ went to the bishop of the diocese where the plaintiff was, who certified that he was his *frere*

to apprehend him, and deliver him to the abbot or his attorney; and the form is such:

[234]

The king to the sheriff, &c. greeting: Because friar I. canon of A. despising the habit of that order, is vagrant, and runs up and down from country to country in your bailiwick in a secular habit, to the peril of his soul, and the manifest scandal of his order, as our beloved abbot of A. hath signified unto us by his letters patent: we command you, that you arrest the aforesaid I. where-soever he shall happen to be found in your bailiwick, and deliver him to the said abbot, or to his attorney in this behalf, to be chastised according to the rule of the order aforesaid. Witness, &c.

And upon that he may have an *alias* and *pluries* against the sheriff, and an attachment, if the sheriff will not execute the writ. A

There is another writ of another form thus: B

The king to the same, &c. greeting: Because friar T. of the S. order of Clune, professed in that order, despising the habit of that order, &c. as our beloved in Christ the abbot of B. by his letters patent hath signified to us: we command you, that, &c. (as above.)

And it seemeth, that although he who departeth from his house or religion change not his habit, yet if he be vagrant, &c. and the abbot of the house certify the same, he shall have such writ, notwithstanding these words in the writ (*spreto habitu, &c.*) for those are but words of form and not of substance: for the habit of religion is the obedience and profession which he hath made to such rule, &c. and if he relinquish that obedience, and the rules of that religion, and depart, it seemeth that he doth relinquish the habit: and if that departure be certified by any abbot where such person was remaining, and under his obedience when he departed and relinquished his religion, the same is sufficient to have such writ upon such certificate; or if it be certified by him who is the visitor of the religious house, &c. But there are not any writs in the Register framed upon such certificate made by any visitor or abbot of any other house, upon which the party who left his habit was not remaining at the time, and therefore *quare* of the same. C

Writ de Leproso amovendo.

D **W**HERE a man is a lazar or a leper, and is dwelling in any town, and he will come into the church, or amongst his neighbours where they are assembled, to talk with them, to their annoyance and disturbance; then he or they may sue forth this writ to remove him from their company; and the writ is such:

E *The king to the sheriff, &c. or to the mayor and sheriffs of London, greeting: Because we have received information that I. of N. is a leper, and is commonly conversant amongst the men of the city aforesaid, and hath communication with them as well in publick as in private places; and refuses to remove himself to a solitary place, as the custome is, and as he ought to do, to the great damage and manifest peril of the men aforesaid, by reason of the contagion of the disease aforesaid; we being willing to take precaution against such danger, as to us appertains, and that which is just and hath been used, be done touching the premisses, command you, that taking with you certain discreet and lawful men of the city aforesaid, not suspected, who have the best knowledge of the person of the said I. of N. and of such disease, you go to him the said I. and cause him to be seen and diligently examined in the presence of the said men, and if you find him to be a leper, as before is said, then without delay, in the best manner you can, cause him to be carried away, and removed from the communication of the said men, to a solitary place, to dwell there, as the custome is, lest by such his common conversation, damage or peril should in any wise happen to the said men. Witness, &c.*

F And upon that the party may have an *alias* and a *pluries*, and attachment against the mayor, or against him to whom the writ is directed, if he will not execute the writ.

G But it seemeth, if a man be a leper or a lazar, and will keep himself within his house, and will not converse with his neighbours, that then he shall not be moved out of his house. But there are divers manners of lepers; but it seemeth that the writ is for those lepers who appear to the sight of all men that they are lepers by their voice, and their

Writ De deonerando pro ratâ portione.

fores, and the putrefaction of their flesh, and by the smell of them. But for those who are infected with that disease in their bodies, where it doth not appear outwardly upon their bodies, *quare*, whether such writ lieth to remove them.

Writ De deonerando pro ratâ portione.

Plow. 125.

WHERE a man holdeth ten oxgangs of lands by H fealty, and twenty shillings rent of the king, and the tenant do alieneth one part, or one oxgang, to one man, and another oxgang to another man in fee, and so to others the rest of the oxgangs, and the sheriff or the king's officer will distrain one of the said tenants for the whole rent; then he who is distrained may sue forth this writ, which is thus:

The king to the sheriff, &c. greeting: I. A. and W. have shewed unto us, that whereas four oxgangs of land with the appurtenances in E. which were B.'s and which are holden of us by the service of thirteen shillings by the year, to be rendred by the hands of our sheriff of the county aforesaid for the time being, are come to the hands of the said I. A. and W. and also to the hands of T. by their purchase; and although they the said I. A. and W. only hold two oxgangs of land thereof, you nevertheless exact the said yearly thirteen shillings of the said I. A. and W. omitting the said T. who holds the other two oxgangs of land, and compel them the said I. A. and W. by various distresses, to render to us the said yearly thirteen shillings, to the great expence and grievance of them the said I. A. and W. whereupon they have besought us to apply a fit remedy for them; and because we will not that the said I. A. and W. be injured in this matter, we command you, that if upon inquest upon the premisses to be made, or by other lawful means it shall appear to you, that the aforesaid four oxgangs of land are held of us by the service of thirteen shillings only, and that they the said I. A. and W. hold two oxgangs of land thereof, and the said T. the other two oxgangs of land, the residue, as it is said, then having received of the said I. A. and W. those services which to us belong, for the proportionate share of their holding, which they hold thereof, you permit them to be quit of the rest of the service: provided always, that the said residue of that service be levied upon the said T. to our use, as is just. Witness, &c.

And

A And it appeareth by this writ, that notwithstanding the statute of *quia emptores terrarum*, if the king's tenant alien part of the lands held of the king, yet the king or his minister may distrain one of the tenants for the whole rent, &c. although that the statute saith, *quod feoffatus teneat pro particula illa*, &c. But it seemeth that the king is not bound by the statute, but a common person is. For if a man hold twenty acres of land by fealty, and twenty shillings rent of another man, and he alien one acre to one in fee, and another acre to another in fee, the lord shall not distrain the alienee but for the rate and value of the land which he hath purchased, and shall not distrain one alienee for the whole rent, &c. But if the king's tenant alien part of the lands, which he holdeth of the king, without licence, then the king may chuse whether he will take the alienee for his tenant, or not; and then it is a question whether the alienee shall have such writ: but if the alienee pay a fine to the king for the alienation, it is reason that he have such writ as before, if he be distrained for the whole rent which issueth out of all the lands, whereof he hath purchased but part, &c.

Br. Appar. count
21. Dyer 240. a.

29 H. 8. f. 28.
Perkins 129.

27 H. 8. 26. con.

And the like writ as before is awarded to the queen's officers, where they distrain one tenant for the whole rent, where he holdeth but part of the lands, and several other tenants hold the residue thereof.

B And if a man who holdeth one hundred acres of land, ought by his tenure thereof to repair a certain bridge, if he alien in fee twenty acres to one, and twenty acres to another, and one of them only be distrained to make the reparations upon a presentment found; he shall have a special writ to the king's officers, that they do not distrain him, but according to the rate of his proportion of the land which he holdeth; and the writ is such:

Br. Appar.
count. 21. Plow.
125. b.

29 H. 8. f. 28.

The king to his beloved and faithful I. of T. and his companions our justices, assigned to inquire of the defects of the great bridge of C. and to cause those defects to be repaired and amended, greeting: It is shewed to us on the behalf of R. grievously complaining, that whereas it is presented before you, that the same R. holds four hides of land with the appurtenances in D. in the

X 4

county

county aforesaid, which have been anciently accustomed to be charged towards the reparation of the said bridge: or thus, which are asserted to be bound to the reparation of the said bridge, and although he only hold twenty acres of land of the said four hides of land, and certain others hold all the residue of the said four hides; nevertheless you, by reason of the presentment aforesaid, endeavour to levy seven pounds (at which sum the said four hides of land are apportioned for the reparation of the said bridge,) upon the said R. as if he held all the four hides of land aforesaid, whereas he does not hold them all, omitting the other tenants aforesaid, and cause him upon that occasion to be grievously distrained and much disquieted, to the great damage of him the said R. and the manifest oppression of his estate; whereupon he hath besought us to provide him a remedy; and because we will not have him the said R. to be unduly charged in this matter, we command you, that if by inquest to be taken thereon, in the presence of him the said R. if he will be present, or by other lawful means it shall appear to you, that he the said R. holds but twenty acres of the said four hides of land and the rest of the same four hides of land are in the hands of other tenants, as it is said, then cause to be levied the said seven pounds, at which the said four hides of land are so assessed, for the reparation of the bridge aforesaid, as well of the said R. as of the said other tenants, to wit, of every one of them according to the proportion of his holding of the said four hides of land, sparing nobody in this matter, nor charging any tenant of the same unduly beyond the proportion of his holding, notwithstanding the said presentment. And if any thing be levied of the said R. unjustly beyond the proportion of his holding, cause it to be restored to him without delay. Witness, &c.

There is another form of writ for the king's tenant, C where he is distrained for all the rent, where he holdeth but part of the lands out of which the rent ought to be paid; which see in the Register.

Stamf. Prærog.
30.

But see the statute of 34 Ed. 3. cap. 15. that if the king's tenant *in capite* alien his lands in fee without licence, the alienation shall not bind the king, but he shall have his prerogative, of those lands and tenements; and therefore *quære* the true construction of that statute, what is the true intent thereof.

Writ of Superfedeas.

A **T**HE writ of *superfedeas* lieth in divers cases: as if a man be sued, and a *capias* or *exigent* be awarded against him, he may by his friend sue forth a *superfedeas* out of the place where the *capias* or *exigent* was awarded against him; or out of the term he may sue forth a *superfedeas* out of the chancery directed to the sheriff, that he take sureties of him, &c., to appear at the day, &c. and that he let him at liberty, or he may find sureties in the chancery to appear at the day of the return of the *capias* or *exigent*; and upon this he shall have a *superfedeas* to the sheriff, that he let him go, if he have arrested him thereupon; and if he have not arrested him, that then he do not arrest him, but suffer him to go in peace; and the form of the writ is such:

The king to the sheriff, &c. Whereas A. impleads before us by our writ, B. and certain others contained in our said writ, of a certain trespass to him the said A. by the aforesaid B. and the others aforesaid committed, as it is said, and the same B. because he came not before us to answer the said A. of the trespass aforesaid, is put in exigent in your county to be outlawed, he being wholly ignorant of the exigent aforesaid; whereupon he hath besought us that whereas he is ready upon the premisses in all things to stand to right, we would assist him in this matter: we regarding the supplication aforesaid, as far as it shall be just, command you, that if the said B. coming personally in your county, shall render himself to our prison as the custom is, then supersede the exigent aforesaid; and afterwards if the said B. shall find you sufficient bail, who shall be bail to have him before us at such a day, whereon our said writ of exigent is returnable before us, to answer the said A. of the trespass aforesaid, and further to do and receive that which our court shall consider in the premisses, then in the mean time cause the said B. to be delivered out of the said prison (if he be detained in the same upon that and no other occasion) by the bail aforesaid: and have there the names of the bail and this writ, &c.

And

Writ of Superfedeas.

And when he findeth sureties in the chancery to appear at the day of the return of the *exigent*, then he shall have a *superfedeas* of another form; which shall be such:

The king to the sheriff, &c. C. hath besought us, That whereas B. impleads before us by our writ, the said C. and certain others of a certain trespass to the said B. by the said C. and the others aforesaid committed, as it is said, and although the same C. is ready to answer the said B. of the trespass aforesaid, (if any there was,) and in all things to stand to right, according to the law and custom of our realm of England, yet because you have returned before us, that the said C. was not found in your bailiwick according to the process thereof before us had, he is put in exigent by you in your county to be outlawed, that we would provide for his indemnity in this behalf: we, because that W. R. and I. have become bail before us in our chancery to have the said C. before us at the day whereon our writ of exigent against him the said C. is returnable, to answer the said B. of the trespass aforesaid, being willing the said C. &c. if he is put in exigent aforesaid, by occasion of the premisses and for no other cause, as is said, then in the mean time supersede doing any thing further in that exigent, by the bail abovesaid; and have there then this writ. Witnesses, &c.

And if the clerk who hath the keeping of the rolls for the taking of statute-merchants, forge a bond in the name of another, and put the mayor's seal, and a seal in the name of the party, to the same, and make an enrollment thereof in the rolls, and afterwards certify the same into the chancery, for which a *capias* is awarded against the party; then he against whom such process is sued forth may come into the chancery, and have a writ directed unto the sheriff, relating therein the whole matter, and reciting that the party hath thereupon sued forth an *audita querela*, directed to the justices of the king's bench, commanding them to call the parties before them, &c. and commanding the sheriff, that if the party who is sued will find sufficient sureties to the sheriff, to appear at the day in the king's bench, and to pay the debt, if he be condemned, that then he do surcease to arrest or trouble him, &c.

And if a man cite another by the pope's bull, to appear in person at the court of *Rome*, &c. against the statutes;

now

now if he who made the citation be committed to prison, he may sue in the chancery to have a special writ directed unto the sheriff, rehearsing the matter, commanding him, that if the parties will find sufficient sureties, body for body, to appear before the king and his council at a certain day, and perform what the court shall adjudge or shall be decreed by the king or council, that then he let him at large: And by that writ the sheriff ought to set him at liberty; and if he will not, the party shall have an *alias* and a *pluries*, and attachment against him.

D If a man depart from his master without sufficient cause, and another knowing the same, retain him, for which the master bringeth a writ against him for the retaining of his servant, upon which a *capias* is awarded, he may in the chancery find sureties to appear *in banco* at the return of the writ, and have a *superfedeas* thereupon to the sheriff, not to arrest him: and if he have arrested him, to set him at liberty.

E And the like writ and *superfedeas* shall be awarded out of the chancery, if the action be brought against the servant for his departure, and a *capias* awarded, &c. and he may find sureties in the chancery to appear at the day, and have a *superfedeas* to the sheriff, that he surcease to arrest him, &c.

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A And if a man be sued in the common pleas in debt, or in trespass for damages, and a *capias* or *exigent* be awarded, if the debtor find sureties in chancery to appear before the justices at the day of the return of the writ, and to abide then the law, he shall have a *superfedeas* to the sheriff not to arrest him; and if (a) he hath arrested him, to set him at large. But it seemeth that upon a *capias* or *exigent* *ad satisfaciendum*, the sheriff ought not to let the party at liberty after he hath taken him by force of the writ (a), because he is in execution for the party, &c.

(a) Note; If he be taken before the *superfedeas* purchased, the *superfedeas* is not to the purpose: but if he comes in by *cepi corpus*, there shall not be an attachment, 11 H. 6. 32. 19 H. 6. 43.

accordant, where he was taken before the *superfedeas* delivered.

(a) Nor ought the sheriff to surcease from taking him. 18 H. 6. 19. 2 H. 7. 12, 19.

And

Writ of Superfedeas.

And so upon an *exigent* awarded in a writ of account, he may sue forth such *superfedeas*.

And so if a man become surety for another, to pay a fine in the common pleas or king's bench, and the fine be not paid, &c. for which cause, process of utlagary is awarded against the surety, &c. at the *exigent* awarded against the surety, he may sue forth a *superfedeas*, and find sureties in the chancery to appear at the day, and to stand right to the law; and thereupon he shall have a *superfedeas* to the sheriff, that he do not arrest the sureties, and if he hath arrested them, that he let them at liberty. B

And it seemeth reasonable that such writ should be granted (b), because the fine is a duty to the king, and the king may respite the same if he please; but if an *exigent* be awarded upon a judgment at the suit of the party, such *superfedeas* is not allowable.

If a man be indicted before justices of the peace, and put in *exigent*, he may find sureties in the chancery to appear at the day of the return of the process awarded by the justices of peace, and thereupon have a *superfedeas* to the sheriff not to arrest him, and if he have arrested him, to set him at liberty; and this surety shall be body for body, &c. C

If a man be put in *exigent*, at the suit of another in several personal actions, he may find sureties in chancery body for body, to appear to every action at the return of the writs; and thereupon he shall have a *superfedeas* to the sheriff, reciting that he hath found sureties in chancery to appear at the days, &c. commanding him not to arrest him, &c. And the forms of the writs of the *superfedeas* are in divers manners. D

And if a man be indicted before justices of peace, and a *capias* or *exigent* be awarded thereupon, and afterwards the indictment be removed by *certiorari*; the party out of the chancery may sue forth a *superfedeas* to the sheriff not to E

(b) For if a *mandamus* comes to the escheator at the suit of the heir; the escheator ought not to surcease, by reason of the *superfedeas*. *Dyer* 170. in casu hæredis domini Powis. See 4 H. 7. 16. held so by Fairfax in a diem clausit extremum.

arrest him, &c. because the indictment is removed by *certiorari*, &c. or the justices of peace *ex officio* ought to award a *superfedeas* to the sheriff after the *certiorari* is come to them, to remove the indictment, as it seemeth: *tamen quere*. And in such case he may have a *superfedeas* out of the chancery directed to the sheriff, commanding him, that if the party will yield himself to the sheriff, and find sureties to appear at the day of the return of the writ, that then the sheriff do not arrest him, &c.

If a man sue a knight of St. John of Jerusalem, by his proper name, and not by the name of knight of St. John, &c. and he be sued to the *exigent*, the *superfedeas* shall be purchased in the name of the prior, and of the said knight his *confrater*, in the chancery, and there they may find sureties to appear at the day; and thereupon they shall have a *superfedeas* to the sheriff, that he do not arrest him, &c.

F If a man be condemned in debt or trespass by false verdict, and a *capias* be awarded to arrest the party, now if the party sue an attaint, he may come into the chancery, and there find sureties that he shall appear at the day, &c. and answer the party, and satisfy the king and the party what belongeth to them, if the attaint pass against him; and upon the same he may have a *superfedeas* to the sheriff, that he do not arrest him; and the form of the writ is such:

G (a) *The king to the sheriff, &c. A. hath shewed unto us, That whereas B. lately impleaded in our court before our justices lately itinerant in the said county, the aforesaid A. and certain others of a certain trespass, to the same B. by the aforesaid A. &c. committed, as it was said, of which trespass the same A. by the inquest (upon which he put himself before the said justices) was convicted, by which the said A. is now in prison, to remain therein, until we shall be satisfied of that which to us appertains, in this behalf, and the said B. of the damages adjudged to him; and now the said A. hath arraigned by our writ returnable before us, &c. wheresoever, &c. a certain jury of twenty-four knights to attaint the jurors of the inquest aforesaid, and hath besought us*

(a) But note; the writ of attaint is *sedeas* at all be granted in attaint. not a *superfedeas*, nor shall any *super-* Dyer 61.

that

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that pending the jury aforesaid so before us, we would cause him the said A. to be delivered out of the prison wherein he is so detained, so that he may be able to prosecute the same according to the law, &c. we willing to assist the aforesaid A. in the premisses, &c. and because that the same A. hath found before us in our chancery certain bail, to wit, A. and B. of your county, who have become bail, &c. every of them, to satisfy as well to us of that which to us belongs, as the aforesaid B. of his damages (as is before said) adjudged, if the jury aforesaid shall pass against him, or the said A. shall not prosecute the same, command you, that without delay you cause him the said A. to be delivered out of the prison aforesaid, if he be detained in the same upon that and no other occasion, by the bail abovesaid, so that he may be able to prosecute the said jury, as he ought; and have before the said justices at the said day this writ. *Witness, &c.*

If a man be condemned in trespass, and the plaintiff pray an *elegit*, and a *capias* be awarded against the party for the king's fine, the king may grant a *superfedeas* directed to the sheriff, that he do not arrest the defendant upon the *capias*, because the plaintiff hath made his election to have his execution by *elegit*.

And if in trespass the defendant agree with the plaintiff pendant the suit, he shall have a *superfedeas* to the sheriff, that he do not execute the process sued forth against him; but then it seemeth the same agreement ought to appear upon record in the court, &c.

If a man be condemned in trespass, and the defendant bring an attain, and the plaintiff sue an execution by *elegit*, and a *capias* be awarded against the defendant for the king's fine; the defendant in chancery may sue a *superfedeas* of the *capias*, reciting in the writ that the defendant hath brought an attain, and that the plaintiff hath sued forth an *elegit*, commanding the sheriff to whom the *superfedeas* is directed, that if the defendant yield himself to prison, and there find sureties to the sheriff to satisfy the king what belongeth to him, &c. that then he deliver him out of prison upon that security, if he conceive the same to be sufficient.

Post. 251. B.

If a man sue a writ *de uxore abductâ cum bonis viri*, and a *capias* or *exigent* be awarded thereupon, the defendant may find

find sureties in the chancery, body for body, to appear at the day; and upon the same he shall have a *superfedeas* to the sheriff, to set him at liberty, if he have arrested him. And so upon an appeal of rape, if the defendant in chancery find sureties, body for body, to appear at the return of the writ, and to stand to the law, he shall have *superfedeas* to the sheriff to set him at liberty, &c.

E And so if a writ be granted out of the chancery to attach one to find sureties of peace for a menace to another, he may put in security in chancery by surety to keep the peace, and thereupon have a *superfedeas* to the sheriff, reciting this matter, commanding him to set him at liberty, if he have arrested him.

If a man sue a *supplicavit* out of the chancery, to arrest one to find sureties of peace, the defendant who is arrested may have a *superfedeas* in chancery to the sheriff, commanding him not to arrest him; and the writ shall be such:

The king, &c. greeting: although lately upon the prayer of M. suggesting to us that I. had grievously threatened the said M. touching his life and the mutilation of his member, we commanded you by our writ, that you should cause him the said I. to come personally before you, and compel him to find sufficient manucaptors that he the said I. under a certain pain to be reasonably imposed upon him by you, for which you would answer, that he would not bring upon the same M. or procure to be brought on him, any damage or ill; and if he should refuse to do this before you, then you should take him, and cause him to be kept safely in our prison of N. until he should find security in form aforesaid: yet because R. and S. &c. personally appearing before us in our chancery, have become bail for the aforesaid I. that he should not bring, nor procure to be brought, any damage or ill to the same M. of his body, to wit, each of them under the pain of twenty pounds, which they granted to be levied of their lands and chattels to our use, if he the said I. should bring or procure to be brought any damage to him the said M. or his body: we command you, that you supersede the execution of our said writ to you in this behalf directed, by the bail aforesaid, &c. Witness, &c.

And if the justices of peace award a precept or a warrant against a man to find sureties for the peace, he against whom

whom the warrant is, may find sureties in the chancery to keep the peace, &c. and upon the same have a *superfedeas* to the justices of the peace, that they surcease, &c. to arrest him, &c. and thereupon the justices ought to surcease to make any warrant against him afterwards; and if they have made any, they ought to award a *superfedeas* to the sheriff, commanding him to surcease; and the writ directed to the justices of the peace is such:

The king to his beloved and faithful his justices assigned to keep the peace in the county of Berks, greeting, &c. W. hath besought us, that whereas he is afraid that upon the prosecution of T. he shall be taken and arrested and grievously imprisoned by you, until he shall find security that he the said W. will not do or procure to be done, any damage or ill to him the said T. of his body, we would therefore command the caption and arrest aforesaid to be superseded by sufficient bail: we, because that R. S. P. and F. of the county of W. in our chancery personally appointed, have become bail for him the said W. that he shall not do, or procure to be done, any damage or ill to the same T. of his body, to wit, every one of them under the pain of one hundred pounds, which they have granted to be levied upon their goods and chattels to our use, in case any damage or ill happen to the same T. of his body, by the said W. or his procurement, regarding the prayer aforesaid, command you, that you wholly supersede by the bail aforesaid, the caption and arrest of the body of the said W. to be made on that occasion, &c. Witness, &c.

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And if the wife be in fear or doubt of her husband that he will beat her or kill her, &c. she may sue a *supplicavit* in chancery against her husband, to find sureties that he do not beat her, or evil intreat her, and to govern, rule, and chastise her reasonably; and the writ is such:

The king to the sheriff, &c. R. the wife of I. B. hath besought us, that whereas she of her life, &c. is grievously and manifestly threatened by the said I. B. we would provide for the safety of her the said R. in this behalf; we regarding the prayer aforesaid, command you, firmly injoining, that you cause him the said I. B. to come personally before you, and by all means compel him to find sufficient bail, &c. (as above) that he will well and honestly treat and govern the aforesaid R. and that he will not do, or procure

procure to be done, any damage or ill to her the said R. of her body, otherwise than lawfully and reasonably belongs to her husband, for the cause of government and chastisement of his wife. And if this before you, &c.

A And if a man in court-baron in a writ of right, or in other court, as in London, in a writ of right, vouch a foreigner to warranty, &c. the tenant who voucheth may sue forth a *superseas* directed to the court, commanding them that they do not proceed in the plea, until the warranty be determined, &c. *quod vide* in the Register, fol. 5. 11. & 13. And upon the same he may have an *alias*, and a *pluries* and an attachment, against the bailiffs, or mayor of London and sheriff, if they will not surcease, &c.

B And if a man sue a prohibition to the spiritual court and to the parson, and notwithstanding the spiritual judge proceed to excommunicate the party, and upon certificate thereof in the chancery a writ of *excommunicato capiendo* is awarded; he who sued the prohibition shall have a *superseas* to the sheriff, reciting the whole matter, commanding him that he do not arrest the party; and if he have arrested him, that he deliver him: *quod vide* in the Register, fol. 67. And he may have a *superseas* out of that court out of which the prohibition issued, &c.

If the collectors of the subsidy or tenths granted by the clergy be excommenged by the ordinary for their contumacy, &c. and that be certified, and thereupon a writ directed to the sheriff to arrest them, if it be testified in the chancery afterwards by the sovereign of the collectors, that they have satisfied and submitted themselves; then upon that a *superseas* shall be directed to surcease to arrest them; and if he have arrested them, that he deliver them.

And if the bishop certify an excommunication into the chancery against one for contumacy in a suit depending before him, and thereupon a writ of *excommunicato capiendo* be awarded; if the official by his letters after certify in chancery, that the defendant hath appealed, to Rome, or elsewhere: now upon that certificate he shall have a *superseas* to the sheriff, that he do not arrest him pendent the appeal; and if he have arrested him, that then he deliver him, &c.

And so if he who is excommunicate shew in chancery the pope's letters, testifying that he hath appealed, &c. he shall have a *superfedeas* to the sheriff commanding him to surcease, &c. and if he have taken him by force of the writ of *excommunicato capiendo*, that then he deliver him; *quod vide Regist. fol. 68.*

If a man take one as his villain, and another sue a writ *C de homine replegiando*, and he claim him as his villain; he who is taken may put in sureties in chancery to yield himself and his goods, if, &c. and thereupon he shall have a *superfedeas* directed to him who took him, not to take him; and if he hath taken him, that then he deliver him. *Regist. 79, 80.*

Finch. 306.

If a man hold plea in the county of a trespass which is *D vi & armis*, &c. the defendant may sue out of the chancery a *superfedeas* unto the sheriff or to the bailiffs of the hundred where the plea is holden, reciting that a plea of trespass *vi & armis* shall not be holden in a less court than before the king, or other justices by his commandment. *Regist. fol. 111.*

And upon a writ of error brought of a judgment given *E in London* or other court, the party shall have a *superfedeas* directed to the mayor and sheriffs, or other officer, to surcease from execution. *Regist. fol. 129.*

If a man be distrained by a process which issues out of *F the exchequer*, as executor to an accountant there, he may have a *superfedeas* out of the chancery directed to the treasurer and barons of the exchequer, surmising that he is not executor or surety for the accountant, &c. commanding them that they surcease, until they have inquired the truth thereof.

And the like writ is given where the barons award process of distress against any one who hath not any of the lands of him who was the accountant, &c. but of his purchase before he was accountant; *quod vide Regist. 144.*

And if the sheriff hold plea of forty shillings, the defendant may sue forth a *superfedeas*, that he do not proceed, &c. *H* or after judgment he may sue a *superfedeas* directed to the sheriff, commanding him not to award execution upon such judgment; and upon that an *alias*, a *pluries* and an attachment. *Regist. 145.*

47 Ed. 3. 27.
and 19 H. 6. 2.
sen.

If a man for debt of ten pounds sue in the county by divers plaints there, every plaint being under the sum of forty shillings, where the debt is one entire debt, the defendant may sue a *superfedeas* to the sheriff, commanding him not to hold plea in those plaints.

If a man sue one in the county before the sheriff for breach of covenants, to his damage of ten pounds, or above the sum of forty shillings, then the defendant may sue a *superfedeas* to the sheriff that he surcease; *quod vide Regist. 146.*

A And if a man sue forth an *audita querela* to avoid a statute-staple or a statute-merchant, he shall have a *superfedeas* to the sheriff not to do execution hanging the plea, &c. *Regist. 183.*

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B Note, That the constable of *Dover*, who is warden of the cinque ports, cannot hold plea of a thing which belongeth to be determined in the county, unless it concern the keeping of the castle of *Dover*; and if he do, the party shall have a writ directed unto him to surcease, and upon the same an *alias* and a *pluriss*, and an attachment; and the writ shall be such:

The king to his beloved and faithful B. constable of his castle of Dover and keeper of his cinque parts, or to his lieutenant greeting: whereas amongst other articles which lord Edward some time king of England, our grandfather, granted for the amendment of the people of his realm, it is ordained, that the constable of the castle of Dover shall not hold plea at the gate of the said castle of any foreign plea of the county, that doth not touch the custody of the same castle; and you a certain plea between W. of C. and P. of a certain debt which the same W. requires of the said P. (which plea doth not concern the custody of the said castle) held before you at the gate of the castle, and unjustly disquiet him the said P. on that occasion by various distresses, against the tenor of the articles aforesaid, as on the behalf of the said P. we are given to understand: we willing that the said articles be inviolably observed, command you, if it is so, that then you wholly surcease from further holding that plea before you, and that you do not molest or in any wise aggrieve him the said P. against the tenor of the said articles; and the distress, if any, &c.

C And if the constable hold plea of any thing of which he ought not to hold plea, the party shall have his action upon the statute, although he do not sue forth any writ before directed to the constable.

Writ De procedendo ad Judicium.

Ant. 153. D.

NOTE, that by the statute made *anno 2 Ed. 3. cap. 8.* it is enacted that commandment be not either by the great seal nor the petty seal to delay common right; but if such commandments come, &c. that the justices shall not surcease to do right in any point.

And by the statute made *anno 14 Ed. 3. cap. 14.* the justices shall not surcease for the great seal or petit seal.

And by that it appeareth, that the king's justices shall proceed according to law, notwithstanding the king's commandments directed and delivered to them. And if the party think in his conscience, that such commandments will be made, then he may sue forth a writ upon the statute, commanding them to proceed, notwithstanding such commandments; and the writ shall be such:

The king to his beloved and faithful W. &c. and his companions, justices assigned to take the assises in the county of Salop, greeting: whereas in our parliament at Northampton called in the second year of our reign, it was agreed and ordained by us, the prelates, earls, barons and other great men, and the whole commons of our realm being in the same parliament, that it should not be commanded by our great seal nor by our little seal, to hinder or delay the common law, and if such commands should come, that the justices for that cause should not surcease to do justice, as in the said statute is more fully contained: we command you, that you in no wise surcease to do justice to the parties in an assise of novel disseisin, which T. hath arraigned before you by our writ against A. and I. his wife, and others, in our original writ contained, of tenements in E. by virtue of any command of the great seal or little seal to you directed or to be directed, against the tenor of the statute abovesaid. Witness, &c.

But it seemeth needless to sue forth such writ, if the justices consider their oath, and their duty to God and the king: but because some justices are fearful, and will not do a thing which may turn displeasure to them, this writ was ordained, as it seemeth, and for no other cause; for the statute was sufficient in itself; and the party may have in the end of the writ these words, viz.

But

But proceed to the taking of the same assise as of right ought to be done, according to the law and custom of our realm of England. *Witness, &c.*

Br. Ni. Pri. 37.

E And by the statut of *Westm. 2.* upon issues joined in the common pleas or king's bench, they shall be tried by *nisi prius* before the same justices in the country. And by the statute of fines, in the time of vacation those issues shall be tried before one of those justices, associating to him a knight, &c.

And by the statute of *York*, a justice of assise associating to him an honest man shall take *nisi prius*, and try the issues arising thereupon taken in the common pleas or king's bench, if they need not great examination, &c. But in those cases it appeareth by the Register, the king by his writ may restrain and command the justices, that they do not award *nisi prius*; and if they have awarded any writ of *nisi prius*, that they send a *superfedeas*; and the writ shall be such:

The king to his justices of the bench, greeting: although by the common council of our realm it is agreed and appointed, that inquests and juries to be taken in pleas of land, which are not of great examination, shall be taken in the country before a justice of the place where the plea is, having associated to him some honest man of the country, knight or other, so that a common day be given in the bench, and a certain day and place in the country, in the presence of the parties; and also that inquests and juries in pleas of land that require great examination, shall be taken before two justices of the bench in form aforesaid; nevertheless the plea which is before you in the bench aforesaid by our writ between W. demandant, and T. tenant of the manor of S. with the appurtenances in the county of W. especially concerns us, more especially seeing that the said T. holds the said manor for the term of his life of our grant, and after the death of the same T. the said manor ought wholly to revert to us and our heirs; we willing to take care of our indemnity in this behalf, command you, that if you happen to proceed to take the inquest thereupon, then that you take such inquest before us in the bench aforesaid, and not elsewhere, the concord and statute aforesaid notwithstanding; and if you have commanded the inquest thereof to be taken by our writ of *nisi prius*, then you command the taking of that inquest in the country to be superseded. *Witness, &c.*

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A There is another form of writ for this matter in the Register. And *M. 32 H. 6.* it appeareth, that it is in

the justices' discretion, whether they will grant *nisi prius*, or not; and by the like reason, the king at his discretion, and by his writ directed to the justices, may restrain the same.

Stamf. 156.
B. Ni. Pri. 3.
Proceedend. 14.

And *nisi prius* shall not be granted where the king is party, without the king's special warrant, or the king's attorney's assent, notwithstanding the aforesaid statutes.

Writ upon the Statute made for the King's Steward and Marshal, that they do not hold Plea, if not, &c.

10 H. 7. 13.
St. 28 E. 1.

S F. E by the statute of *articuli super chartas*, cap. 3. (a) B
That the steward and marshal shall not hold plea of freehold, nor any plea of trespass, but only of trespass done in the king's house, and other trespasses done within the verge, and of contracts and covenants which some of the king's house shall have made with others of the king's house, and in the same house, and not elsewhere; and they shall not plead any plea of trespass, other than that which shall be attached by them, before the king remove out of the verge where the trespass shall be done, so as that it be ended before the king go out of the bounds of the verge where the trespass is done; and if it cannot be ended there, the parties shall cease, and it shall be tried at the common law. And the steward shall not take cognizance of the debts of any other men, than such as be of the king's house: he shall hold no other plea by obligation made at the distress of the steward or marshal; and if they do contrary to that ordinance, it shall be void. And the Court of the marshalsea, or the jurisdiction thereof, shall not exceed above twelve miles by the statute made 13 R. 2. c. 3. And a man may answer an action brought against him in the court of the steward or marshal, that he was not of the king's household at the time of the trespass or contract made, or that the plaintiff was

(a) See 10 H. 6. 13. In trespass &c. as well as in contracts, &c. for brought there; of a trespass done else an action is maintainable on the within the verge, it is necessary that statute. *Nul tiel record* a good plea one of the parties be of the household, there. 7 H. 6. 30.

C not one of the king's household at that time. And if a man be sued in the court of the steward and marshal contrary to the statute, then he who is grieved shall have the following writ (a).

The king to the steward and marshal of his household, greeting : Whereas amongst other articles which lord Edward some time king of England, our grandfather, granted for the amendment of the state of his people, it is ordained that the steward and marshal of our household shall not hold plea of freehold, of debt, covenant, trespass, or of contract made between the king's people, but only of trespasss done within the house, and of other trespassses done within the verge, and of contracts and covenants that any of the king's house shall have made with others of the same house, and in the same house, not elsewhere; and now from the complaine of A. and B. we have received information that you, at the prosecution of I. of L. hold before you a plea between the aforesaid A. and I. (who are not of the same house, as it is said) of a certain debt which the same A. demands of the said I. to the great damage and grievance of him the said A. and against the form of the ordinance aforesaid; we therefore being willing that the said ordinance be observed in all and every its articles, command you, if so it is, that then you wholly surcease from farther holding that plea before you, not molesting or in any wise aggrieving him the said A. against the tenor of the ordinance aforesaid; and the distress, if any, &c. Witness, &c.

D And if the plea be lawfully begun before the steward and marshal of the king's house within the verge, and before the plea be ended the king remove; now the plea is thereby discontinued, and then it behoveth the party to commence his action at the common law, and not within the

(a) Note; A good rule by *Babington*, 9 H. 6. 2. If a statute gives a greater penalty for an offence, and also a special action; there, if the party who brings the writ does not make mention of the statute, he shall have no advantage of the penalty given by the statute; as for hunting in parks, or *pro uxore abducta cum bonis viri*. But

if a statute gives a greater penalty; but no other action lies, but that which was before at common law, there a man shall have advantage thereof (without mentioning the statute) as in waste, &c. See 9 Ed. 1. *Fitz. Tenant in Dower*. So in a special assise, where the party is found a disseisor with force, &c.

verge before the steward and marshal; and if he do, the party grieved shall have this writ:

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The king to the steward and marshal of his household, greeting: whereas amongst other articles which lord Edward some time king of England, our grandfather, granted for the amendment of the state of his people, it is ordained that the steward and marshal of our household shall not hold plea of freehold, of debt, of covenant or contract of the men of the people, but only of trespasses of our household and other trespasses done within the verge, and of contracts and covenants which any of the said household shall make with another of the same household and in the same house, and not elsewhere; and they shall plead no other plea of trespass that is not attached by them before we depart from the verge where the trespass was committed, and shall plead and determine those pleas speedily, from day to day, so that they may be pleaded and determined before we depart from the same verge where the trespass was committed; and if it so be, that they cannot be determined within the limits of the same verge, such pleas shall cease before the steward and marshal, and the plaintiffs shall have recourse to the common law: and now from the grievous complaint of A. and B. we have received information that you, at the suit of R. of B. them the said, &c. distrain to answer before you to the aforesaid R. of a certain trespass to the same R. by the said A. and B. committed within our verge at E. in the twelfth year, &c. as it is said; which plea was not attached by you before we departed from that verge; and that you many ways unjustly disquiet them upon that occasion, to the great expence and grievance of them the said A. and B. and against the tenor of the articles aforesaid; we therefore willing that the said ordinance be inviolably observed in all and every one of its articles, command you, if so it is, that then you in no wise distrain them the said A. and B. to answer before you of such trespass, but wholly supersede the further holding of that plea before you; and the distress, if any, &c. Witness, &c.

And if a man be sued by plaint before the steward and marshal of the king's house, who is not of the king's household, and the debtor plead, and affirm the jurisdiction of the court; and the cause be adjudged against him; yet he shall have an action upon the statute against the party who sueth him there; *quod vide T. 3 H. 3. Title Estoppel.*

Writ of Certiorari to remove Records, &c.

B **T**HE writs of *certiorari* to remove records out of one court into another, are of several forms; and the form of the writ to remove the record of re-disseisin is as follows:

The king to the sheriff, &c. Because for some certain causes we will be certified upon the record and process, of a certain inquisition made before you and the keepers of the pleas of our crown in your county at N. by our writ upon a certain re-disseisin to V. by R. done, as it is said, of one messuage with the appurtenances in N.; we command you, that if judgment be thereupon given, then that you send the record and process aforesaid, with all things touching them, to us, under your seal distinctly and openly, and this writ (a), so that, &c. wheresoever, &c. that having inspected

(a) *Where the tenor of the record is sufficient, and where the record itself must be removed.*

If one brings debt on a recovery in an inferior court, as in a court of pie-powders, &c. there it is not necessary for the party to have the record itself, nor the tenor of it: So if one brings debt in C. B. on damages recovered in B. R. or in the court of *Norwich*; but if *nul tiel record* be pleaded there, it is sufficient if the tenor of the record be removed into chancery by *certiorari*, and sent thence by *mittimus*. 7 H. 6. 19. See 19 H. 6. 79. and 80. accordant, *Dyer* 187.

2. Where one is to sue execution of a record in another court, as where it is to sue execution in C. B. on a recovery in ancient demesne, or before justices of assise or of *oyer and terminer*, there the record itself ought to be removed into chancery by *certiorari*, and the said record with the *certiorari* sent into C. B. by *mittimus*; and so if

an attaint is before sued on such a recovery. 34 H. 6. 251. But when execution is to be sued in C. B. upon a record which remains in the treasury there, as on a fine, recovery, &c. (Note, all those records were removed into the receipt of the exchequer, *circa temp.* 9 H. 4. 37 H. 6. 17.) But where it is in the chancery, as on a petition among parceners, *Dyer* 136. there they will not send in the record itself, but a *certiorari* to the chamberlain and treasurer, and a *mittimus* of the tenor of the record: See the cause 39 H. 6. 4. *per Prisot*; and if the tenor of the record be before the *certiorari* filed in chancery, they will not send the *certiorari* into the receipt, (Treasury) nor send in the tenor which is there filed, but only *tenorem tenoris*, and it seems that is sufficient. 17 H. 6. 17, 28. See 24 Ed. 3. 79. that no execution can be on the tenor of a record. *Dyer* 217. No *scire facias* on the transcript of a re-summons sent out of chancery into C. B. and see *Dyer* 228. and 5 H. 7. 25. where a record

ted the record and process aforesaid, we may cause further to be done thereupon, that which of right, and according to the law and custom of our realm of England, ought to be done. *Witness, &c.*

And he may remove it after a disseisin, &c.

Post. 247.

See a Recovery in ancient demesne, 39 H. 6. 3 & 4. But see 44 Ed. 3. 28. 36 H. 8. Br. Certiorari 20. There is no such writ of certiorari to remove the record in C. B. immediately, but first in the chancery. Yet 43 Aff. 20. the contrary is admitted.

21 Ed. 3. 5. Br. Cert. Action 5.

And if a man be attainted in a re-disseisin or a post-disseisin, and have no lands within the county to be put in execution, he may remove this record by a *certiorari* into the king's bench, and there have execution. And he may remove a recovery in an assise of *novel disseisin* into the king's bench by a *certiorari* in like manner. But the writ of *certiorari* saith, *if judgment be thereupon given, then the record and process, &c. as above.* By which it appeareth, that judgment should be given in the assise, &c. otherwise it seemeth he shall not have the writ; for the *certiorari* is said to remove the record, to the intent that he may sue forth execution upon the same when it is removed into the king's bench, for there they may award execution into every county to execute the same.

If a man recover lands by assise of *novel disseisin*, and the defendant sue a certificate before other justices, there he ought to sue forth a *certiorari* to the justices of assise, to certify the record unto the new justices, who hold plea upon the certificate, and the words (*sine dilatione*) shall not be put in any writ which hath a certain day of return.

And if a man recover *per assise de novel disseisin*, and the defendant will sue an attainr before other justices, then he ought to have a *certiorari* to the justices of assise to certify the record, *if judgment be given.*

And if a man recover before justices in eyre in an assise of *novel disseisin*, the other party may sue forth an attainr

record is pleaded in the same court, and *nul tiel record* pleaded thereto, it ought not to be entred *quod habeat hic recordum sub suo periculo. Et quia justiciarii hic ne advisari volunt super inspectionem & examinationem recordi, &c. dies dat' est partibus, &c.* See and note 31 H. 6. 51. 39 H. 6. 3. 32 Ed. 3. *Quare Imp. 1.* where *nul tiel record* is a good plea. See 7 H. 6. 30.

Note; The statute 1 & 2 Ph. & M. is, that no *certiorari* to remove any recognizance shall be awarded, except the writ be signed with the hand of the chief justice, or some other justice in his absence. *Vide Rast. Stat. Mainprise, pl. 45.*

Note; A record may be removed after a disseisin, &c.

before

before other justices, and have a *certiorari* to the justices in eyre to send the records before the other justices.

F And the king may send his writ of *certiorari* to the barons, treasurer and chamberlains of the exchequer, to certify the record of assise in the treasury in their custody into the king's bench. 37 H. 6. 16.

There is another writ of *certiorari* to the treasurer and chamberlains of the exchequer to certify the record of the assise taken, but the judgment was not given, because the defendant died; but the writ is of little effect, for that by the death of the defendant before judgment the writ is abated.

9 Ed. 4. 50.
Choc.
24 Ed. 3. 24.
15 Ed. 3. 5.
8 Ed. 4. 25, 26.

G And if a man will sue an attaint upon recovery in an assise, which record of assise is in the treasury, then he who bringeth the attaint (a) ought to sue a *certiorari* to the treasurer and chamberlains of the exchequer, to certify the record of assise before the justices, before the attaint is sued forth.

A If a man recover damage in an assise of *novel disseisin*, and before he hath execution of the damages the record be sent into the treasury; then he may sue a *certiorari* to the treasurer and chamberlains to certify the record of recovery in the assise before the king, that execution may be awarded for the damages. [243]

B And if a man recover lands and damages in an assise of fresh force, and the defendant have not any thing within the city or borough to satisfy the damages; then the party may sue a *certiorari* to the mayor or bailiffs to certify the record into the king's bench, that he may have execution of the damages recovered.

C If the king make certain persons justices of assise, &c. in one county, and afterwards at another assises he make other justices of the same county, a general *certiorari* shall be sued to the first justices to certify all the records of assise and juries which are to be taken in that county before the new justices.

(a) Note; Here there ought to be the record itself, and not a tenor only.
39 H. 6. 4.

And in assise of *novel disseisin*, if the verdict pass for the plaintiff, and before judgment is given a new commission be to other justices of the same county, the party for whom the verdict passed may sue forth a *certiorari* to the first justices to remove the record into the king's bench, to have judgment given there upon that assise and verdict past; or may have a *certiorari* to the first justices to send the record before the new justices, that they may give judgment thereupon: and it behoveth to have another writ unto the new justices to receive the record, and that they proceed to judgment. And when the record is removed after verdict given before other justices, if they delay to proceed to judgment upon the verdict, the party for whom the judgment should be given may sue forth a writ directed to them, *that having received and seen the record and process aforesaid, they proceed to judgment, &c.* And thereupon the party may have an *alias* and a *pluries*, or *signify cause to us*: and if they will not do any thing, whether he shall have an attachment is a question; for there is a statute made *an. 3 Ed. 3.* which willeth, that commissioners in special case limited by the statute shall be punished, for their misdoings; but it seemeth it shall not be, if the statute be not made, for that cause only.

27 Aff. pl. 18.
2 R. 3. 4.
Ivo. indictment
30.

And *anno 27 Ed. 3.* in assise a justice was indicted, for that he caused an indictment, which was found to be but trespass, to be entred in record as felony, &c. And the same was adjudged a void indictment, because it was to make void a record. But yet it seemeth he might be indicted for taking money, or for other falsity, which doth not destroy and defeat the record. *Quare.*

And a man may have a writ to the same justices before whom the verdict passed, &c. to proceed to judgment, as well as he shall have a writ to other justices before whom the record is removed (a).

If

(a) Note; If the justice of *nisi prius* die before the day in bank, after the verdict taken, the court may receive the record by the hands of the clerk

of assise, without any *certiorari* to the executors of the justice, and the entry hereof shall be general: *ad quem diem hic vener' partes, & justiciarii ad assisas coram*

G If a man in an assise of *novel disseisin*, or other action real, before justices in eyre vouch one to warranty, who presently entred into warranty, and afterwards loseth; the plaintiff shall recover, and the tenant shall have judgment to recover over in value against the vouchee, and if this record be sent into the treasury, and he who recovered in value will have execution of the lands recovered in value, he ought to sue a *certiorari* to the treasurer and chamberlains of the exchequer, to certify the record in assise into the chancery; and when it is there certified, the king shall send the (b) record by *mittimus* into the common pleas, and thereupon the justices shall award a *scire facias* against the party against whom the recovery was, to come and shew why execution should not be done in value.

H And a man may sue a *certiorari* directed to the justices of assise, to remove the records of assise into the chancery, and also a deed which is before them, &c. and afterwards he may sue forth a writ of *mittimus* unto the new justices of assise of those records, and of the deeds which remained before the other justices.

I And if the husband and wife sue a bond, which is made to the wife, in the common pleas, and the deed be there denied, upon which it remains in the keeping of the *custos brevium*, and the husband die; the wife may have a writ out of the chancery directed to the *custos brevium* in the common pleas, that he deliver the deed to the wife,

coram quib', &c. miserunt hic recordum script' in hac verba, &c. And admit that it be error, yet this shall not be received to be assigned for error; for it is contrary to what the court did as judge; and though in some cases the court shall give faith to the death of a judge, as 2 H. 7. A servant of an attorney was received by a judge who died in *pais*. Dyer 163. But Note; if a justice of *nisi prius* be removed, &c. the *certiorari* shall be to himself; and so if his executors have the record, the

certiorari shall be to them. See Dyer 439. 13 H. 7. 21.

(b) Note; A *scire facias* lies on the tenor before any entry thereof on the roll; and if the transcript of a fine comes in by *mittimus*, at the suit of one, and another has cause to have execution upon the same fine, he ought to pursue the *mittimus* to have execution; for otherwise he cannot have it, although the tenor was entered on the roll before.

because

because the plea is determined by the death of the husband.

And when the justices in eyre come, and sit in any K county by the king's commission, then a writ shall be sent to the justices of the common pleas, to adjourn all the pleas of that county which are in the common pleas before the justices in eyre, to be determined before them : and if the justices in eyre cannot determine the pleas before they depart out of the county, then a writ shall be sent to the justices in eyre, to send those records and pleas, which are not determined or adjudged, into the common pleas again : and the writ shall be such :

The king to his beloved and faithful S. greeting : whereas the plea which was before our justices of the bench by our writ between S. demandant, and I. tenant of one messuage with the appurtenances in T. in the county of N. together with the said writ, was sent to be pleaded before you and your companions, lately our justices itinerant in the county aforesaid and that plea for some certain causes in the eyre aforesaid remained undiscussed, without this, that the same plea was adjourned elsewhere to be pleaded, by which, on the behalf of him the said S. we are besought that we will do him justice in the premisses ; we, for that cause thinking it to be expedient that our justices of the bench should be certified upon the record and process of the plea aforesaid before you and your said companions in the eyre aforesaid, command you, that you send, without delay, the record and process aforesaid, together with the said writ, and all other things touching them, to our said justices of the bench under your seal distinctly and openly, and this writ, that those being inspected, further process may be in the said plea, according to the law and custom of our realm. Witness, &c.

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Br. Brief 414.
Vide 22 H. 6.
15.
23 Aff. 14.
Br. Brief 282.
40 Ed. 3. 32.
Br. Brief 304.

And if an assise of *novel disseisin* be brought in the king's A bench, and the defendant allege and plead, that there is a writ of a higher nature depending in the common pleas for the same land between the plaintiff and defendant ; then if they be at issue, whether there be such a writ depending or not, the defendant ought to sue a *certiorari* out of the chancery to the justices of the common pleas, to remove and

and certify the records into the chancery; and upon the same certified, he shall have a writ of *mittimus* out of the chancery to the justices of the king's bench; with which writ the king shall send the tenor of the record which is there into the king's bench: and the writ of *mittimus* shall be such:

The king to his beloved and faithful R. of W. and his companions, justices assigned to hold pleas before us, greeting: whereas R. P. lately arraigned a certain assise of novel disseisin before us at Westminster, by our writ against B. of tenements in A. and two messuages, three plough-lands, twenty acres of meadow with the appurtenances in the same town put in view, and the said B. in pleading in that assise alleged that a writ of an higher nature then, and long before, was depending between the parties aforesaid, before our beloved and faithful W. and his companions our justices of the bench, and hath vouched to warrant it the record and process thereof had before our said justices of the bench, as we have received information: we thinking it to be expedient and necessary that you be certified upon the record and process aforesaid had before our said justices of the bench, send to you the tenor thereof (which we caused to come before us in our chancery) under the foot of the seal, commanding, that you having inspected the record and process aforesaid, you further cause to be done, that which of right and according to the law and custom of our realm ought to be done. Witness, &c.

B And if a man recover in an assise of novel disseisin before justices of assise in the county, and before execution sued of the damages, the record be removed into the chancery by *certiorari*; he who recovered in the assise may sue forth a writ of *mittimus* to send the record into the king's bench, commanding them to proceed, and to award execution; and the writ is such:

The king to his beloved and faithful E. and his companions our justices assigned to hold pleas before us, greeting: whereas I. by the recognizance of an assise of novel disseisin, which W. arraigned before B. and his companions lately justices of lord Edward some time king of England our grandfather assigned to take the assises, &c. against R. and others, &c. of tenements in T. recovered

Writ of Certiorari to remove Records.

covered his seisin of one messuage with the appurtenances in D. by the consideration of the said court, and his damages, which were taxed to ten pounds, as by the record and process of the assise aforesaid, which we have caused to come before us for certain causes, more fully appears; and execution of the judgment as to the damages to be recovered, yet remains to be done, as we are given to understand on the behalf of him the said I.: we therefore willing that execution of the said judgment be duly demanded, send to you the record and process aforesaid under the foot of our seal, commanding you, that having seen the record and process aforesaid, you further cause to be done as to the execution of the said judgment, that which of right and according to the law and custom of our realm ought to be done. *Witness, &c.*

And if a man recover lands by assise of novel disseisin before justices of assise, and the defendant have a writ of *warrantia chartæ* depending in the common pleas, the party may sue a *certiorari* to remove the record of the assise in chancery, and thereupon have a *mittimus* of the record of assise to the justices of the common pleas, and in the end of the writ shall be said, *that having inspected these you may be able more safely to proceed in the plea of warranty aforesaid, according to the law, &c.* C

And in assise of novel disseisin, if the defendant plead two or three recoveries in assise before other justices, which record is in the treasury, &c. now if the record be denied, for which he sueth a *certiorari* to the treasurer and chamberlains of the exchequer, to certify the records at a certain day into the chancery; if they at the day certify any record, but do not farther certify that there are other rolls of the same justices remaining in the treasury in the *Tower of London*, so that they have not made a full search of the records; then the king shall send to the justices of assise his writ, reciting the matter, commanding them to continue that assise until another day, so as the defendant be not damaged by failing of the record; and the same seemeth to be reasonable. D

And if a man be bound in a statute-staple to pay a certain sum of money at a day certain, now after the day the party who hath the statute, may come to the mayor of the staple and shew him the same, and pray him to certify the same

same into the chancery; and if the mayor will not so do, then the party who hath the obligation may come into the chancery, and shew the same there, and pray a *certiorari* to the mayor to certify the enrolment of the statute: and if the mayor return, that he hath twice, or oftner, certified the same before that time, as appeareth by the enrolment made by the mayor, if there appear no such certificate upon record in the chancery, then he who hath the bond of the statute may sue forth a new *certiorari* to the mayor, reciting in the writ, that there is not any certificate recorded in the chancery, commanding him to certify the enrolment of the statute which is before him; and upon the same he may have an *alias* and a *pluries* against the mayor, if he will not certify the same, and also an attachment against the mayor, directed to the sheriff, &c.

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A The writ of *certiorari* is an (a) original writ, and issueth sometimes out of the chancery, and sometimes out of the king's bench, and where the king would be certified of any record which is in the treasury, or in the common pleas, or in any other court of record, or before the sheriff and coroners, or of a record before commissioners, or before the escheator; he may send this writ to any of the said courts or offices, to certify such record before him *in banco*, or in the chancery, or before other justices, where the king pleaseth to have the same certified: and he or they to whom the *certiorari* is directed, ought to send the same record according to the tenor of the writ, and as the writ commandeth them or him; and if he or they fail so to do, then an *alias* shall we awarded, and afterwards a *pluries*, *vel causam nobis significes*, and after an attachment, if a good cause be not returned upon the *pluries*, wherefore they do not send the record.

Vide 10 Eliz.
Dyer 274. 275.

But see Lambart
411.
The use at this
day is, to award
a subpoena to the
commiff. 37 H.
6. 30. Marle.

B Also the king may by such writ of *certiorari* send for the tenor of the record, or for the tenor of the tenor of the record, at his election; and these writs ought to be obeyed,

(a) A *certiorari* out of B. R. was to remove the record of the foot of a fine in C. B. and it was not allowed, but a *certiorari* out of the chancery for the tenor was, and then it was sent into B. R. by *mittimus*. Dyer 275.

and the records sent, as the writ commandeth them to be, and the form of some of these writs here followeth :

The king to his beloved and faithful R. greeting : because for some certain causes we will be certified upon the record and process of outlawry against I. in the county of T. pronounced before you and your companions our justices assigned to hear and determine divers felonies in the county aforesaid : we command you, that, &c. you send the tenor of the record and process aforesaid ; or thus, that without delay you send the tenor of the record and process of outlawry aforesaid, with all things touching them, to us in our chancery under your seal distinctly and openly, and this writ. Witness, &c.

And to certify an indictment taken before the justices in eyre, the form is such :

The king, &c. Because upon the presentment made before you and your companions our justices itinerant in the county of Lincoln, of the death of A. whereof B. taken and detained in our prison of N. is suspected, and also for some certain causes we will be certified upon the inquisition thereof before you made ; we command you, that without delay you send the enrolment of the presentment and inquisition aforesaid to us, under your seal distinctly and openly, and this writ. Witness, &c.

And there is another form of writ directed to the coroners :

The king to his coroners in the county of Lincoln, greeting : because for some certain causes we will be certified upon the record and process of a certain appeal, which W. lately an approver deceased, made against S. of a certain robbery which the same W. and B. in your county, &c. one after the other said was done ; we command you, that, &c. you send to us the record and process of the same appeal with all things touching them, under your seals, &c. And where a man before justices becometh an approver, and the coroner appointeth him to make his approvement, and afterwards the approver dieth ; the king may write unto the coroner to send him the record of the approvement.

And another form of *certiorari* to the mayor and sheriffs of London :

The

24 Aff. 40.
Br. Certiora. 9.
the writ was
awarded to the
executors of the
Coroner. Vi. 36
H. 6. 24. for
certiorari to the
coroners. Vi. 2
Eliz. Dyer 223.
Proctor's Case.

The king to the mayor and sheriffs of London, greeting: because certain businesses by appeals, indictments and attachments before you in the said city of London entred, not yet determinéd, and certain inquisitions made in the said city, were returned, the inquisitions of which businesses, and the records and procefs, remain in your power, as it is said, all which we will to be expedited and finally determinéd by our beloved and faithful B. C. and D. our justices assigned to hear and determine divers trespasses committed in the said city; we command you that, &c. you send the aforesaid records and procefs, with all things touching them, to the said justices under your seals, &c.

F And if the king by virtue of any writ (a) of *certiorari* remove any record before any of the justices, he may afterwards send for that record, and remove the same before himself or other justices, at his election; and then the writ is such:

The king, &c. Because for some certain causes we will be certified upon the record and procefs of a certain inquisition taken before our beloved and faithful W. and P. our justices assigned to deliver our gaol of N. for the death of E. whereof C. is † suspected, as it is said, which record and procefs we caused to come before you for certain causes, and they still remain in your power, as is said; we command you, that you send the said record and procefs, with all things touching them, to us under your seals distinctly, &c.

G And when the king would be certified of an outlawry in the county, then the *certiorari* shall be as well to the sheriff, as to the (b) coroners of the county, to certify the same.

But

(a) And this writ being delivered to the justices, seems to suspend their power, so that if they arraign the party upon an indictment afterwards, it is erroneous, 21 H. 6. 28. also after the return, although the indictment be not removed, they cannot proceed, and if they do, it is error. 6 H. 7. 16 per Keble. See Dyer 245.

† Suspected; see *Spelman Gloss. verb. Reatus*, i. e. *vocatur in jus ut rectum faciat*.

(b) See it directed to the coroners only. 9 H. 4. 7. 36 H. 6. 13. Dyer 223. viz. where there is a default in the sheriff in not returning, or misreturning the exigent. See the writ to the sheriff and coroners. Register 284. 38 Ed. 3. 14. & *alibi*. For although the judgment is rendered by the coroners, as 21 H. 7. 33. yet the record is in custody of the sheriff, and the coroners have only a short note or memorandum of it, Dyer 223. and see in

But if a man be condemned in the king's bench, and afterwards outlawed for the king's fine upon his condemnation; if he will sue forth a pardon of the outlawry, he ought to have a *certiorari* out of the chancery to certify the record of the condemnation, which shall be such :

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The king to his beloved and faithful I. his chief justice, &c. greeting : whereas E. was convicted before you of a certain trespass done to F. with force and arms, and because he came not before us to satisfy to us for his ransom, which belongs to us in this behalf, and to the said F. for his damages adjudged in this behalf, was put in exigent to be outlawed, and upon that occasion was afterwards outlawed, which outlawry is now returned before you, as we have received information; and he the said E. hath besought us, that whereas he hath already satisfied the said F. of his damages aforesaid, we would graciously pardon him the outlawry aforesaid; we for that cause willing to be certified upon the record and process of outlawry aforesaid, and whether he the said E. hath satisfied the said F. of the damages aforesaid (as it is said) or not, command you, that you render us more certain touching the premisses under your seal distinctly and openly, &c.

And if a man be indicted before justices of gaol delivery of felony, and afterwards acquitted; then if he who is acquitted doubt that he shall be troubled by reason of the same indictment, he may sue forth a *certiorari* to remove the record and process of the inquisition, &c. into the chancery, &c. A

London a writ to the sheriffs only. *Dyer* 318.

See on a record of outlawry certified by *certiorari*, a charter of pardon, and a *seire facias* issued, 9 H. 4. 7. and the sheriff shall be amerced, if it be returned on the exigent, *de 4to exact'* only, 36 H. 6. 13. but the party shall not be disabled. 21 Aff. 49. If a *capias utlagat'* shall be awarded, *quare* 38 Ed. 3. 14. the goods of the party seized as forfeited. *Dyer* 221. *Proctor's* case, *contr. Co. Lit.* 288. See the judg-

ment in *Proctor's* case; that the *certiorari* shall be granted to the coroners for the outlawry, either for hatching the sheriff to return the exigent, or to have him amerced for his concealment, or to falsify his return, as if he returns *4to exact'*, where it was *5to exact'*, and is not to disable the party; for till the exigent, which is the sheriff's warrant, be returned, there is no forfeiture, *contr. Dyer* 318. *Putten* and *Haines's* case.

And

B And if a man recover debt or damages before justices of *oyer* and *terminer*, and have not execution, he may remove the record and the process into the king's bench, and there sue execution, and have a *scire facias* upon the record, &c. 14 H. 7. 15.
15 H. 7. 5.
36 H. 6. 23.
39 H. 6. 34.

And if a man recover damages in an action of trespass before justices of *oyer* and *terminer*, and have the party in execution by reason of the judgment; if the party in execution die in prison, he who recovered may sue a *certiorari* to the justices to remove the record into the king's bench, that the justices there may award execution, as the law requireth in such case. And I think, in that case, that the party shall have execution by *elegit*, or by *scire facias*; for it seemeth not to be reasonable, that the death of him who dieth in prison should be a satisfaction to the party. *Tamen quære*, for I doubt of it. 34 H. 6. 47.
cont.
4 Ed. 4. 39.
2 H. 6. 48.
Danby.
47 Ed. 3.
Execut. 41.
2 Cro. 153.

C If a man be arraigned of murder, and found guilty *se defendendo*, for which he is bailed or committed to prison, he may have a *certiorari* to remove the record into the chancery, that he may sue forth a pardon thereupon according to the course of the law, &c. Post. 247.

D If a man recover damages in trespass in the king's bench, and have the defendant's lands in execution by *elegit*, and then he who recovereth be disseised by the other, for which he bringeth an assise before the justices of assise; he who bringeth the assise ought to have a *certiorari* to the chief justice of the king's bench to certify the record and the proceedings to judgment given in the king's bench, and the execution there; and the plaintiff may have the record in chancery exemplified under the great seal, if need be, to the justices of assise.

E And if a man recover by assise of novel disseisin, and the party sue an attainr in the common pleas or in the king's bench, he ought to sue a *certiorari* to the justices of assise to remove the record in the king's bench, or into the chancery, &c. that he may send the same before the justices before whom the attainr is sued, &c.

F And it appeareth by the Register, in the title *Certiorari*, that if false judgment be given before the steward and marshal of the king's house, upon a plaint there sued, the party

party may sue an attaint by writ before the steward and marshal to attaint that jury, &c. and the king may send a *certiorari* to certify the record before himself in chancery, which shall be directed to the steward and marshal of the king's house; but the record shall be certified under the seal of the steward only, as appeareth by the words of the writ, &c.

There is another writ of *certiorari* directed to the treasurer and barons of the exchequer to certify the king of the debt which *I.* oweth unto him, and of the debt which the ancestor of the said *I.* owed the king, and which are clear debts, and to certify the same without delay under the exchequer seal to the king, and not into the chancery, or into the king's bench. G

There is another *certiorari* directed to the justices of gaol delivery to certify the record and proceedings upon an indictment of murder, and acquital thereupon, into the chancery, &c. H

There is another *certiorari* to the justices of peace to certify into the chancery the tenor of the records and process of outlawry of several persons returned before them. I

There is another writ of *certiorari* directed to the steward and marshal of the king's house to certify under the seal of the steward into the king's bench an indictment taken before the steward and marshal, which the king would have to be determined only before him in the king's bench. K

There is another writ of *certiorari* to the mayor and sheriffs of *York* to certify the tenor of the record and proceedings in an assise of fresh force sued before them in the same city without writ, and to certify the tenor of the record and proceedings in the chancery. L

There is another writ of *certiorari* to the bishop of *Oxford* to certify into the chancery how many persons were admitted, instituted and inducted into such a church, from the first year of King *Edward IV.* to the present time, and at whose presentation, and by what title, and in what manner. M

There is another writ of *certiorari* to the *custos brevium* to certify the king in the chancery the tenor of the original and N

and judicial writs, and the warrants of attorney which are in his custody concerning such an action or suit.

O And another writ directed to the treasurer and chamberlains of the exchequer to certify the king in the chancery the record and proceedings of a writ of *quo warranto* sued by the king's ancestor, King *Edward I.* against the abbot of *Westminster*, for certain liberties claimed by the said abbot, &c.

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A And another writ of *certiorari* to the commissioners of sewers to certify the king in the chancery at a certain day all the presentments before them made against such a person, &c.

B And a writ of *certiorari* directed to the chief justice of the common pleas to certify the tenor of a record and proceedings of utlagary against such a one in *London*, remaining in *Middlesex* before the justices of the common pleas, and to certify the same into the chancery.

C And if a baron, who is a peer of the realm, be sued in the common pleas, and process be awarded against him by *capias* or *exigent*, then he may sue a *certiorari* in the chancery directed to the justices of the common pleas or king's bench, testifying that he is a peer of the realm, commanding them to award such process against him as they ought to do against a peer of the realm; and the writ is such:

The king to his justices of the bench, greeting: We command you, if G. T. knight, be impleaded before you at the suit of any person by an action personal, you cause to be made such process (and no other, against him in the said action) as against lords, great men, earls or barons of our realm of England, who ought to come by summons to our parliaments, or any of them, according to the law and custom of our realm of England ought to be made, because the said G. T. one of the barons of our said realm, coming to our parliaments by our royal summons, is recorded; and this we command you; and make known to others whom it may concern, &c. Witness, &c.

D And if a man recover damages and costs in an assise of novel disseisin, he may sue a *certiorari* to remove the record into the chancery directed to the justices of the assise, to the intent that the king may send the same to any of his

courts, that he who recovereth may sue execution of the damages recovered; and upon the record being sent into the king's bench he shall send it into the common pleas by writ of *mittimus* directed to the justices there, that they do as they ought to do according to the law, to make the damages to be levied.

There is another form of *certiorari* by these words:

E

The king to the sheriff, &c. We willing for certain causes to be certified upon the tenor of the record and process of outlawry against W. of B. of the county of N. husbandman in the same county: or thus; in our husting of London proclaimed, and certified before the justices of him the said king of the bench, which record and process the same king for certain causes made to be certified before him, as it is said, and whether he the said W. had rendered himself to the prison of the Marshalsea of him the king before himself on the occasion aforesaid, or not; therefore let the tenor of the record and process of outlawry aforesaid, and also the certificate of the render with this bill, be sent distinctly and openly without delay to the said king in his chancery, under the seals of I. F. his chief justice assigned to hold pleas before the king himself. Witness the king himself at Westminster the 12th day of May in the 30th year of his reign.

And by that it appeareth, although the record be remaining in *banco*, yet the king may send to remove it into the chancery.

Supra 246. C.

And if a man be arraigned of murder, and it be found F that he killed the party *se defendendo*, he ought to sue a *certiorari* to remove the record into the chancery, and upon the removal thereof to have his pardon; and the form of the pardon appeareth in the Register, fol. 287, 288.

And if a man be attainted in assise of novel disseisin before the justices of assise, of a disseisin with force, and be afterwards outlawed for the king's fine; if he will have a pardon of the utlagary, he ought to have a *certiorari* directed to the justices of assise to certify the king in his chancery the tenor of the record of the assise, and also another writ to the justices to certify the king in his chancery, whether the defendant in the assise hath yielded himself to prison, and hath satisfied the party his damages.

And

And if the same be so certified in the chancery, then upon that certificate he shall have his pardon of the outlawry, and the form of the charter of pardon appeareth in the Register, 288.

And if a man be condemned in the common pleas in debt, and outlawry upon the same; then, before he shall have his pardon; he ought to yield himself to the prison of the *Fleet*, and satisfy the party; and the record of his condemnation and of the satisfaction ought to be certified by *certiorari* unto the king in his chancery; and thereupon he shall have his pardon, and that is by the statute of 5 *Ed.* 3. *cap.* 12.

And if a man be outlawed severally at the suit of three several persons in several actions in which he was condemned, he ought to sue a *certiorari* to remove the tenor of those records and process into the chancery; and also to have a *certiorari* to the justices of the common pleas, if the suit be there to certify the king in chancery, whether he had yielded himself to the prison of the *Fleet*, and hath satisfied the parties: and when the chief justice hath certified the same into the chancery, then he shall have his pardon for the outlawries, and not before; and the form of the pardon appears in the Register, 288.

H There is another *certiorari* to the escheator to certify the manner and cause of taking lands into the king's hands after the death of one; and the writ is such:

The king to his escheator, &c. greeting: Because for some certain causes we will be certified upon the manner and cause of taking the lands and tenements which were I.'s deceased in B. in your bailiwick, seized by you into our hand, as it is said; we command you, that without delay you render us in our chancery more certain upon the manner and cause aforesaid, under your seal distinctly and openly, sending to us this writ. Witness, &c.

A But note, that it is enacted by statute, that if the escheator find any office of any lands or tenements for the king, he ought to return the office into the chancery or into the exchequer, within a month after the finding thereof, upon pain of twenty pounds payable to the king, and to him

Writ of Certiorari to remove Records.

him that will sue for the same; and that statute was made anno 8 H. 6. cap. 16.

There is another *certiorari* directed to the escheator to certify the king in chancery, at his peril, the value of the knights' fees and of the advowsons which I. had, who is dead, who held of the king the day of his death *in capite*; and the writ is such:

The king to his escheator, &c. We willing for certain causes to be certified upon the true value of the knights' fees and advowsons of churches which were I.'s deceased, who held of us in chief in your bailiwick, on the day when he died, and which, by reason of the death of him the said I. are taken into our hand; we command you, that by the oath of, &c. you diligently cause the fees and advowsons aforesaid to be extended, viz. how much they are worth in all issues according to the value thereof; and send that extent without delay distinctly and openly made, to us under your seal and the seals of them by whom the same was made, and this writ. Witnes, &c.

And if a lunatick or a madman kill a man, or if a man B
kill a man by misfortune, or if an infant of eight years old kill a man; if they will sue a pardon for the same, the use is to sue a *certiorari* to remove the tenor of the record and process into the chancery, and thereupon to have a pardon. And in the Register appear several forms of such *certiorari's* to remove such records, which a man may see there more fully, and therefore they are not here mentioned.

*Writ of Forcible Entry upon the Statute of
8 H. 6.*

W HERE a man is with force disseised or put out C
of his lands or (a) tenements whereof he is seised as of an estate of freehold in fee-tail, or in fee, or for life; he may sue forth this writ of forcible entry upon this statute of 8 H. 6. c. 9. Or if he be disseised or put out of his lands and tenements peaceably, and afterwards the

(a) Expulſed of his rent. 20 H. 6. 11. vide *ibid.* 47.

disseisor,

disseisor, or he who ousteth him, keep and detain the lands and tenements with force, then he who is put out may sue this writ, if he will, and by it he shall recover his damages and his costs treble for what he is found (b) damnified by the jury, and what he hath expended in that suit. 2 H. 6. 47.

D If a man enter into any lands and tenements, and disseise another with force and keep the lands and tenements and detain them with force; then he who is ousted and disseised may have this writ, although the words of the statute are in the disjunctive, *scil'* where a man is disseised with force, or where a man disseiseth one peaceably, and afterwards keepeth the lands with force; because the intent of the makers of the statute was to punish such force, whether it were upon the entry and disseisin, or upon the keeping and detaining of the lands, &c. 6 H. 6. 26. 3 Ed. 4. 19. 6 H. 7. 12. 14 H. 6. 16. 10 Ed. 4. 12.

E And note, that none can have or maintain this action, but he who hath a freehold in the lands or tenements at the least; for tenant for years cannot maintain the action, because the words of the writ are, *expulsi & disseisuit* (c); and tenant for years cannot be disseised, &c. And the form of the writ is such: 8 Ed. 4. 19. 2 H. 7. 12. 4 Ed. 4. 18. 3 Ed. 4. 4. 37 H. 6. 31. cont.

F *The king to the sheriff, &c. greeting: If A. shall make you secure, &c. then put B. &c. to answer as well to us, as to the said A. wherefore, whereas in the statute set forth in the parliament held at Westminster in the eighth year of the reign of King Henry the Sixth lately King of England, our progenitor, amongst other things it is contained, that if any person be put out or disseised of any lands or tenements in a forcible manner, or put out peaceably, and after holden out with strong hand, or after such entry any feoffment or discontinuance in any wise thereof be made, to defraud and take away the right of the possessor, that the party aggrieved in this behalf shall have assise of novel disseisin or a writ of trespass against such disseisor; and if the party aggrieved shall recover by assise or action of*

(b) See accordingly 14 H. 6. 32. pulse ou disseise. See Bro. Acc'on sur stat. 17. And quære if a lessor may have this writ, because he is not expelled. Dyer 142. 12 Ed. 4. 1. and yet the statute speaks only of damages.

(c) Yet Note; The words in the statute are in the disjunctive, viz. Ex-

trespass, and it shall be found by verdict; or in other manner by due form of law, that the party defendant entred with force into the lands and tenements, or them after his entry did hold with force, that the plaintiff shall recover his treble damages against the defendant, and moreover that he make fine and ransom to us: the aforesaid B. hath forcibly put out and disseised the aforesaid A. of his freehold in B. and him so put out and disseised, keeps out of the same, in contempt of us, and to the great damage and grievance of him the said A. and against the form of the statute aforesaid, and against our peace: and have there the names of the pledges and this writ. *Witness, &c.*

And the process in this writ is attachment and distress, G
and process of utlagary, &c.

15 H. 7. 17. 18.
9 H. 6. 19.

If a man enter with force into lands and tenements to H
which he hath title and right of entry, and put the tenant
of the freehold out of those lands or tenements; now he
who is so put out with force shall not maintain an (a) ac-
tion of forcible entry against him who had title or right
of entry, because that that entry is not any disseisin of him;
but he may (b) indict him for his entry by force, and by
this indictment he shall be restored to his possession again;
and that is by the statute of 8 H. 6. c. 9; (c) and in this A
action of forcible entry the plaintiff shall recover treble
damages, as well for the occupying of the lands, as for
the first entry therein. And a man may have a forcible B
entry of rent, as well as of lands.

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(a) *Viz.* He shall not maintain it on the stat. R. 2. See 9 H. 6. 19, but the party shall make fine to the king for his forcibly entry. See 31 H. 6. 39. (17 H. 7. 17.) That if the title be found for the plaintiff or defendant, they shall make fine, &c. *vide post.* 249. D.

(b) *Note*; On an indictment of forcible entry found before justices of peace, and removed, hither on the statutes 5 *Eliz.* and 15 *R. 2.* The party pleads as to the entry with force. Not guilty, and he was forced to an-

swer to the entry wherefore he justified the entry. 7 H. 6. 13.

(c) See accordant *Dyer* 141. And *Note*; he who is so restored cannot maintain the possession with force, although he has had a peaceable possession for three years before the expulsion. For the possession is interrupted. See *Dyer* 187. None may grant restitution but those justices before whom the force is found, and the writ shall be under the *teste* of one of them, and then no other justices but those of B. R. can grant a *superfedeas*.

And

C And if a man enter and disseise another with force, and afterwards the disseisee re-enter ; yet the disseisee may bring his action of forcible entry, and recover his treble damages, although he be seised of the land at the time of the action brought ; but if a man continue three years in peaceable possession without interruption, then he may hold the lands with force, and shall not be punished for that force ; and this is by the same statute. 23 H. 3. c. 5.

D And in the writ of forcible entry the defendant may plead not guilty, and it shall be a good plea ; but if the defendant plead matter in bar, yet he ought in the end of his plea in bar to traverse the entry with force, which is alleged ; as to say, *absque hoc* that he did enter with force, &c. but yet the demandant or plaintiff ought to answer the special matter alleged in the bar, without answering to the traverse with force, &c. (d).

E And if the special matter alleged in the bar be found for the defendant, he shall be excused, and the force shall (a) not be inquired of ; and if it be found with the plaintiff, and against the defendant, the defendant shall be attainted of the force, and shall pay treble damages and costs without inquiry of the force ; and the same is the usage at this day. And one jointenant or tenant in common may obtain this action against his companion, if he be put out with force, &c. 17 H. 7. 17.

F And if a man enter with force, and detain with force any lands or tenements, the party may have his action upon the statute of Northampton, made anno 2 Ed. 3. cap. 3. and the writ shall be such :

The king to the sheriff, &c. Because we are given to understand, that a great many malefactors and disturbers of our peace in unlawful assemblies gathered together, armed and arrayed in a warlike manner at C. have gone to enter the close and houses of

(d) See where he maintained the entry with force, by chacement. 9 H. 6. 19. 21 H. 6. 39.

(a) And so it is on an indictment of forcible entry. 7 H. 6. 13. *Vide*

contr. where he pleads *non est ingressus contra formam statuti.* 1 H. 7. 19. 15 H. 7. 17.

certain of our liege subjects there by force and armed power, and for this purpose have agreed together to take and prepare and intend to carry away the goods, rents and revenues, and other their goods whatsoever forth-coming of their possessions whatsoever, in contempt of us, and to the manifest terror and disturbance of certain of our people there, and against the form of the statute at Northampton set forth, of not carrying arms against the peace of Lord Edward the Third lately king of England, our progenitor, and against our peace: we willing the said statute to be inviolably observed, and willing the breakers thereof to be chastised and punished according to the force and effect of the same statute, command you, that at the town of C. and elsewhere in your county, where it shall be necessary, you cause it publickly to be proclaimed, and on our part firmly to be prohibited, that no one, of whatever state or condition he shall be, there go armed against our peace and the form of the said statute, or cause any armed power, or do any other thing there or elsewhere by which our peace or the said statute be hurt, or our people be terrified, disturbed or in any manner unduly aggrieved, upon pain of the loss of their arms and imprisonment of their bodies at our will, as in the said statute it is more fully contained; and all those whom, after and against the proclamation and prohibition aforesaid, you shall find doing contrary, or by inquisition (by you in due manner and form to be taken) shall be found to have done, together with their arms and armour found with them, cause to be arrested and taken, and the bodies of such arrested persons to be safely kept in our prison, until you shall have other matter in command from us for their delivery, and their arms and armour aforesaid to be appraised, and answer to us thereof; but without delay make known to us in our chancery distinctly and openly under your seal, the names of the said arrested persons and of their arms and armour, and what and of what kind they are, and the price or the true value thereof, and your whole doing in this behalf, sending to us this writ. *Witness, &c.*

Writ of Mainprise.

G **T**HE writ of mainprise lieth properly where a man is taken on suspicion of felony, or indicted of felony, where by the law he is bailable, and he offered sufficient sureties unto the sheriff or others who have authority to bail him, and he or they refuse to let him to bail; then he who is kept in prison may sue forth such writ:

The king to the sheriff, &c. It is shewed to us on the behalf of R. taken and detained in our gaol of Gloucester, for a certain theft of a certain horse, committed at S. as it is said, whereof he is indicted before you by a certain inquest of your office, as it is said, that although he hath several times offered to you sufficient mainperners who will be mainprise for him, according to the form of the statute set forth at Westminster, in which it is contained, that persons indicted of such thefts before sheriffs and bailiffs by inquest taken of their offices are replevisable, yet so long as they are of good fame; nevertheless you have hitherto delayed and yet do delay to receive those mainperners from the said R. and to deliver him by such mainprise from the gaol aforesaid to the great expence and grievance of him the said R. and the manifest peril of his life, and against the form of the statute aforesaid; and because we will not that he the said R. be longer detained in the said prison against the form of the statute aforesaid, we command you, that if he the said R. is of good fame and was indicted by inquest taken before you of your office, of the theft aforesaid, as before is said, and is detained in the said prison for the same theft, and upon no other occasion, and will find you sufficient mainperners (a) who will be mainprise to have him before our justices assigned or to be assigned to deliver our said gaol, at their next coming to deliver that gaol, to stand to right touching the said theft, according to the law and custom of our realm of England, then in the mean time cause him the said A. to be delivered from the said prison, by the mainprise abovesaid, according to the form of the statute aforesaid; and

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(a) Note; The manucaptors are only to pay a fine to the king. 1 H. 6. 31.

have

Writ of Mainprise.

have there the names of the mainpernors and this writ. *Witness, &c.*

St. 3 E. 1.

But note, It is prohibited by the statute made anno 28 Ed. 3. c. 9. that the sheriff shall take the indictments by writs or commission directed unto them. And see the statute of *Westm. cap. 15.* for those who shall be bailed.

And if a man be indicted of felony before the bailiffs of the hundred, and put in the gaol for the same, if he offer sufficient sureties to the bailiffs, and they will not bail him, then he who is imprisoned may have such a writ unto the sheriff, thus :

The king to the sheriff, &c. It is shewed unto us on the behalf of I. that whereas he is indicted by certain of his enemies of stealing a certain ox of R. &c. committed at R. as it is said, before the bailiff F. of B. of his hundred of P. by inquest of the office of the said bailiff taken, and upon that occasion is taken and detained in our prison of D. and although he the said I. hath several times for himself offered sufficient mainpernors who will be mainprise for him, according to the form of the statute some time since set forth at Westminster, whereint it is contained, &c. (as above.) We command you, that if he the said I. be of good fame, and be indicted of the theft aforesaid by inquest taken before the same bailiff of his office, as before is said, and for the same theft, &c. (as above,) &c.

And there is another writ for a man who is taken on suspicion of felony, and kept in prison ; and another writ for him who is arrested and kept in prison for petty larceny, &c. But this clause shall then be put into the writ, viz. *Si de aliis latrociniis prius reſati non fuerint :* but this clause *dum tamen bonæ famæ sint,* shall not be put in that writ, where it is sued for him who is taken for petty larceny.

And if a man who is of good fame be appealed by an approver, for which cause he is arrested and kept in prison ; then he may sue a writ to the sheriff, to let him be bailed upon good sureties.

And so if a man be appealed by an approver, and be taken and kept in prison, and afterwards the approver die ; he may sue a writ to the sheriff to set him at liberty upon sufficient bail, if he be not a notorious felon, although he be not a man of good fame.

And

E And if a man be indicted as accessory to a murder, as by his assent and procurement, or receipt, &c. or of aiding or counselling, &c. and be taken for the same, he may sue a writ to the sheriff to take bail of him, until the principals be convicted or attainted, if they be of good fame; but the statute of *West. cap. 15.* doth not speak so largely as the writs in the Register do, for the statute doth not speak of commandment, abetment or consent, &c.

F And if a man be taken by the king's commission, and kept in prison for felony or evil doing, he may by his friends put in sureties in the chancery, that he will appear before the justices, &c. and be of good behaviour, &c. and that body for body; and thereupon he shall have a writ out of the chancery to the sheriff, or the constable of the castle, where he is imprisoned, to set him at liberty, if he be imprisoned for that cause, and for no other.

G And if a man be indicted before justices of peace of trespass, and imprisoned for the same by process, he may sue a writ out of the chancery, directed to the sheriff, to take bail of him to appear before the justices at the sessions, and to set him at liberty; but the justices of peace may take bail of him, and set him at liberty if they so please. Post. C.

H If a man be indicted of trespass before the justices of the peace, and put in prison for it, he may sue a *certiorari* to remove the judgment into the king's bench, directed to the justices of peace, and a *habeas corpus* to the gaoler, that he bring the party at his costs before the king in his bench such a day, &c.

I And if a man be indicted of forestalling, and put in prison for the same, he may sue a writ out of the chancery to the sheriffs, to take bail of him to appear before the justices, &c. to answer the trespass, and then to set him at liberty.

K And if a man sue a writ of error upon false judgment given against him in any city or borough, where he is condemned, and kept in prison; he may sue a writ out of the chancery, directed to the mayor or bailiffs of the city or borough, to take surety of him to answer what shall be due Post. C.

to the king and to the party, if the judgment be affirmed, and commanding them to set him at liberty.

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And so if a man sueth an appeal of maihem against L another, and afterwards is arrested at the suit of the defendant or of another in any city or borough, to the intent that he may not sue his appeal; he may have a writ out of the chancery to the bailiffs or mayor, that they take sureties of him to answer to the party there, &c. and that they set him at liberty; and all those writs appear in the Register.

And if a man be appealed of robbery he may sue a writ out A of the chancery to the sheriff, that he take sureties of him to appear before the justices, &c. and that he set him at liberty; and if he have not arrested him, that he do not arrest him, if the party offer to find such sureties to the sheriff, &c.

Ant. 238. D.

And if a man be sued in debt or trespass, and be arrested B by *capias* or *exigent*, and kept in prison, he may sue a writ to the sheriff out of the chancery, to take bail of him to appear at a day, &c. and that he set him at liberty, &c.

25 H. 6. c. 10.

But now by the statute made *anno* 23 H. 6. every sheriff is bounden to let to bail every one in his custody, who is arrested by writ, bill or warrant, in any action personal, or upon indictment of trespass, if he offer reasonable sureties to appear at the day, &c. in such places where the writ, bill, &c. is returnable, &c. but persons condemned or outlawed, or excommunicated, or taken for surety of the peace, or persons who are committed to prison by the commandment of any justice, and persons wandering and refusing to serve, who remain in the custody of the sheriff; all those persons are excepted, for the sheriff ought not to let such persons to bail.

33 H. 6.

Ant. G.

If a man be indicted of trespass before justices of the C peace, and be arrested and put into prison in the custody of the sheriff, he may sue a writ out of the chancery to the sheriff, that he take bail of him, and set him at liberty; and also he may have a writ directed to the justices of the peace, commanding them to take bail of him, and set him at liberty: or if the party find sureties in the chancery to appear and stand right in law, then he shall have a writ directed

directed to the justices of peace, or unto the sheriff to set him at liberty.

D If a man be bounden in a statute-merchant payable at a day certain, and at the day he pay part of the money, and have a release from the conusee, of the residue, if the conusee sue execution, and arrest the party who hath the release, then the recognisor may sue in chancery, &c. by his friends, and find sureties, body for body, that he shall appear such a day in the king's bench, and pay the (a) money, there, if he cannot otherwise be discharged; and thereupon he shall have a writ to the sheriff, reciting the whole matter, and that he hath found sureties in the chancery, as is aforesaid, commanding him to set him at liberty; and thereupon the sheriff ought to set him at liberty; and if he will not so do, he shall have an *alias*, and a *pluries*, and an attachment against the sheriff, &c.

E And if a man be condemned in any court, and be taken in execution, and afterwards be removed by a *habeas corpus*, or a *certiorari* in chancery; he shall not be bailed, but shall be remanded to prison, there to remain according to the law, until he hath satisfied the party plaintiff, &c.

Anno 2 H. 5. cap. 2.

F And two justices of the peace, whereof one is of the *quorum*, may let men suspected of felony, or other persons who are bailable, to bail, until the next general sessions or gaol-delivery: but the justices of peace are bound there to certify at the next general sessions, or gaol-delivery, that recognizance unto the justices, &c. upon pain of forfeiture of ten pounds, and that is by the statute of 3 H. 7. c. 3.

G And he who is acquitted of murder within the year at the king's suit, shall not be released out of prison until he find sureties to appear at any time the justices will require him until the end of the year, &c. because the party may sue his appeal after against him within the year, &c.

(a) And so in account when the *diem*, and to pay the sum, if found defendant comes in by a *capias ad* against him. 11 H. 6. 31. where they *computandum*, he shall find sureties to were at issue before auditors. keep his day, *i. e.* to appear *de die in*

Supra 250. B.

And what persons areailable, and what not, appeareth by the statute of *Westm.* 1. c. 15.

H

And the justices of gaol-delivery may punish those who let men to bail, who are notailable, by the statute *de Finibus*, cap. 3.

And anno 4 Ed. 3. cap. 2. The sheriff or other officers cannot let those to mainprise who are indicted or appelled, and are not mainpernable by law, &c. but the justices of assize may punish them, &c. And anno 5 Ed. 3. cap. 8. the marshal of the king's bench cannot let to bail those who are indicted or have rendered themselves at the exigent in felony, and are committed to his custody; and if he do, he shall be imprisoned for half a year, and fined at the king's pleasure.

I

Writ of Diem clausit extremum.

WHERE the king's tenantwhoholdeth of him *in capite* as of his crown, by knight's service or in socage, dieth seised, his heir within age, or of full age; then this writ ought to issue forth, and the same ought to be at the suit of the heir, &c. for upon that, when the heir cometh of full age, he ought to sue livery of his lands out of the king's hands; and the writ is such:

K

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The king to his beloved W. of K. his escheator in the county of Devon, greeting: Because W. of S. who held of us in chief is dead, as we have received information; we command you, that without delay, you take into our hand all the lands and tenements of which he the said W. was seised in his demesne as of fee, in your bailiwick, on the day when he died, and cause them to be safely kept until we shall command you some other matter thereupon; and by the oath of honest and lawful men of your bailiwick, by whom the truth of the matter may be better known, inquire diligently, how much lands and tenements the said W. held of us in chief, as well in demesne as in services in your bailiwick on the day when he died, and how much of others and by what services, and how much those lands and tenements

are

4 Eliz Dyer 213. They shall be only of the lands in socage in capite, and not of the lands holden of other lords.

are worth by the year in all issues, and on what day the said W. died, and who is his next heir, and of what age; and the inquiry thereof distinctly and openly made, send to us without delay in our chancery, under your seal, and the seals of those by whom it shall be made, and this writ. *Witness, &c.*

- A** And if the king have a ward, and afterwards one who holdeth of the said ward his lands by knight's service die, his heir within age, or of full age; then a *diem clausit extremum* after his death shall issue in this form:

Staundf. 13. Plö.
Com. 204.

The king to his beloved, &c. Because I. of S. who of the inheritance of W. of O. deceased (who held of us in chief, being within age and in our wardship) held by knight service, is dead, as we have received information; we command you, that, &c. all the lands and tenements, &c. and by the oath, &c. how much lands and tenements, the said I. held of the inheritance aforesaid, and who is his next heir, &c. (as above).

- B** And if the heir dieth being in the custody of the king, then shall issue another writ of *diem clausit extremum* in this form:

The king, &c. Because R. of H. son and heir of I. of H. deceased, who held of us in chief, lately, while he was within age and in our wardship, died, as we have received information, &c. we command you, that by the oath, &c. you inquire what lands and what tenements by the death of the said I. and by reason of the minority of the heir of the said I. are come to our hands, and so are in our hand, and how much thereof are held of us in chief, and how much of others, and by what service, and how much, &c.

- C** And if the king's tenant who holdeth by knight's service die, and his wife be endowed, and the king have the wardship of the lands for the nonage of the heir, and afterwards the tenant in dower die, the lands being in ward in the king's hands; then a *diem clausit extremum* shall be sued in this manner:

The king to his beloved N. of B. mayor of his city of London, and to his escheator in the same city, greeting: Because E. who was the wife of I. of B. (lately deceased) who held certain lands and certain tenements of us in dower, of the inheritance of the said I. some time her husband, is dead, as we have received
A a 3 *information;*

Writ of Diem clausit extremum.

information; we command you, that, &c. all the lands and tenements which the same E. so held in dower of the inheritance of the said I. in your bailiwick, &c. by the oath, &c. you diligently inquire, what lands and tenements the same E. so held in dower of the said inheritance in your bailiwick on the day when she died, and how much thereof are holden of us in chief, and how much of others, and by what services, &c.

Otherwise after the death of tenant for life of lands, of which the king hath the reversion in ward: D

Because A. who certain lands and certain tenements of the inheritance of E. cousin and heir of H. deceased, who held of the king in chief, being within age and in the wardship of the king, held for his life, is dead, &c. we command you, &c. or thus, because A. who held certain lands and certain tenements of us by the law of England, of the inheritance of M. his wife lately deceased is dead; we command you, &c. E

And if tenant for life, the remainder to the king and his heirs, dieth, the king shall have a *diem clausit extremum* in this manner: F

Because A. who was the wife, &c. held certain lands and certain tenements for her life, which after the death of her the said A. ought to remain to us and our heirs, is dead; we command you, &c. what she so held, &c. and which after her death, &c. ought to remain, &c. or thus, after the death of the said B. ought to come to our hands by reason of the minority of the said heir, &c.

And there are divers other forms of writs in the Register after the death of tenant for life, or tenant in dower.

And if the king hath the temporalities of the bishop in his hands, and afterwards one who holdeth by knight's service of those temporalities dieth, his heir in ward to the king, then the *diem clausit extremum* shall be in such form: G

The king, &c. Because B. who held of the archbishoprick of Canterbury (being void and in our hand) by knight's service, is dead, &c. we command you, &c. of which the said A. was seised in his demesne as of fee, and held of the said archbishoprick, without delay, &c.

And if the king hath an idiot in his custody, and afterwards the idiot dieth, the writ of *diem clausit*, &c. shall be thus: H

The

The king, &c. Because B. of C. lately a fool and an idiot, whose lands and tenements by reason of the said idiocy are in our hand, is dead, as we have received information; we command you, that by the oath of, &c. you diligently inquire what lands and what tenements by reason of the idiocy of the said B. were taken into our hand, and are yet in our hand, and of whom or of what persons they are holden, and by what service, and how much those lands are worth, &c. and who is next heir, &c. and the inquisition, &c.

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A And if a writ of *diem clausit extremum* be sent to the escheator, and the escheator be removed from his office, or die before he make the inquiry, &c. then shall issue forth another writ of *diem clausit extremum*, which shall be such :

The king, &c. Whereas we being lately given to understand that I. of B. who held of us in chief, is dead, &c. we commanded our beloved W. of O. lately our escheator in the county aforesaid, that, &c. all the lands and tenements, &c. (as before, changing what ought to be changed) and the said W. is now removed from the said office, by which the execution of our said writ cannot be done, we willing to be certified upon the premisses, command you, that by the oath, &c. you diligently make inquisition upon the premisses, and the same distinctly, &c. Witness, &c.

And another form of writ in this manner :

The king to his beloved, &c. Whereas we being lately given to understand that I. of B. who held of us in chief is dead, commanded our beloved and faithful H. of B. lately our escheator in the same county, that all the lands, &c. he should take into our hand without delay, &c. until we should thereupon command some other matter, and by the oath, &c. should inquire what land, (as in the first writ) and the said H. before the said writ was executed, was removed from the said office : we willing to be certified more fully upon the premisses, command you, that you make diligent inquisition upon the said articles and every of them, and the same distinctly and openly made, &c. (as above.)

But if the first escheator make inquiry by force of the writ, and afterwards die before the inquisition be returned into the chancery, &c. then a *certiorari* shall be awarded

against his executors, to certify the same inquisition; because it is a good matter of record (a) when it is found, and the jurors have put their seal unto the same.

If the king's tenant, who holdeth of him by knight's service, dieth, his heir within age, and no writ is awarded within one year after his death, then, after the year is past, a writ called a *mandamus* shall issue forth; and that writ doth not vary in words from the writ of *diem clausit extremum*: and the writ is such: B

The king to his beloved W. of E. his escheator in the county of B. greeting: We command you, that by the oath of honest and lawful men of your bailiwick, by whom, &c. you diligently inquire what lands and what tenements I. of B. held of us in chief, as well in demesne, as in service, in your bailiwick on the day when he died, and how much of others, and by what service, and how much those lands and tenements are worth by the year in all issues, and what time the said I. died, and who is his next heir, and of what age, and who, or what persons occupied those lands and tenements, from the time of the death of the said I. and perceived the rents and profits thereof; and by what title, and how and in what manner, &c. and the inquisition, &c. C

Stamf. c. 2. Vide
1 Eliz. Dyer
170. 5 Ed. 4. 13.

And note, that if a man sue a writ of *diem clausit extremum*, it ought to be sued within the year, and after the year (b) he shall have that writ of *mandamus*, and not a *diem clausit extremum*. And if a man sue forth a writ of *diem clausit extremum*, and lose the writ, or the same be taken from him with force against his will, he shall not have a new *diem clausit*, &c. But if he have a *diem clausit*, &c. and it be found that the heir is within age, and that the king hath title to him, because that his ancestor held of the king at the time of his death by knight's service, and afterwards the heir die being in ward to the king, and no writ of *diem clausit extremum* within the year after his death; yet there a *mandamus* shall not be awarded after

(a) But before the indenting and the ingrossing, and setting of their seals (although the inquisition be taken and written on paper) it is no verdict; and therefore a *superfedeas* then held

well, &c. Dyer 170. See the stat. 44 Ed. 3. c. 13.

(b) *Contra* if the writ abates for false Latin, &c. 2 H. 6 5.

the year of the death of the ward, but a new writ of *diem clausit extremum*, because the heir died in ward to the king; and that is by the rule of the Register.

D Or if the king's tenant who holdeth of the king by knight's service in chief dieth, the heir may have a special commission directed to certain persons, to inquire what lands, &c. his father held the day of his death, &c. and that special commission shall be as good for the heir as a writ of *diem clausit extremum* after the death of his ancestor. And upon such commission and inquisition taken thereupon, and found and returned in the chancery, the heir at full age shall have his livery as well as upon a writ of *diem clausit extremum* sued forth, &c. But upon a general commission to inquire of all wards, &c. the law is otherwise; for the heir upon such a commission and inquisition returned shall not have livery.

When the heir, who is in ward to the king by reason of lands holden *in capite*, cometh to his full age, then he shall have a writ directed to the escheator, to prove his age, before he shall have livery of his lands; and the writ is such:

E The king to his beloved I. of B. his escheator in the county of B. greeting: Because A. of B. who married M. the sister and one of the heirs of R. deceased, who held in chief of lord Edward lately King of England our grandfather, says, that the said M. is of full age, and prays of us the lands and tenements which are of the inheritance of her the said M. (one part whereof is in our hand, and another part in the custody of I. of H. under the commission of our said grandfather, until the lawful age of the said heir) to be rendred to him; wherefore we willing that the said M. who was born at G. in the county of N. and was baptized in the church of the same town, as it is said, shall prove her age before you, command you that at a certain day and place which you shall appoint for this purpose, you take that proof by the oath as well of knights as of honest and lawful men of your bailiwick, by whom that proof may be taken, and the truth of the age of her the said M. better known and inquired of, and give notice to the said I. that he may be then there to shew, if he has, or knows any thing, to say for himself, why to the said A. and the said

Stamf. 524

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Writ of Diem clausit extremum:

said M. as to her who is of full age (if she be of full age) we ought not to render the lands and tenements aforesaid, and without delay send that proof so taken, to us under your seal, and the seals of those by whom it shall be taken, and this writ. *Witness,* &c.

And by this writ it appeareth, that the writ *de ætate probandâ* shall be directed unto the escheator of the county where the heir was born, and not where the lands of the heir lie; but yet it seemeth reasonable that he may sue it where the lands lie; for it may be that he was born where the king's writ doth not run, or in Ireland, or beyond the sea, as in Calais, &c.

There is another form of writ thus:

The king, &c. Because M. of P. son and heir of F. deceased, who held of us in chief, says that he is of full age, and prays of us the lands and tenements which are of his inheritance, and in our custody, until the lawful age of the said heir, to be rendered to him; wherefore we will, &c. (as before until) may be better known and inquired into, &c. and, &c. send that proof, &c. (as before):

There is another form when the king committeth the ward during his nonage, than when he will sue an *ætate probandâ*, he ought to make mention of the same commitment.

And if a man be in ward unto the king by reason of the temporalities of a bishoprick in the king's hands, when the heir cometh of full age he ought to sue forth an *ætate probandâ*; and the writ shall mention the whole matter; and yet he doth not hold of the king *in capite*. A

And when the heir hath proved his age, and the writ is returned, then he ought to do his homage to the king, or agree with the king for the respiting of the homage, and he shall have such writ:

The king to the same escheator: Know you, that we have taken B homage of I. of H. son and heir of B. of H. deceased, of all the lands and tenements which the said B. his father held of us in chief on the day when he died, and have rendered to him those lands and tenements; and therefore we command you, that having received security of the said I. for his reasonable relief to be

be paid to us at our exchequer, you cause him the said I. to have full seisin of all the lands and tenements aforesaid, whereof the said B. his father was seised in his demesne as of fee in your bailiwick on the day when he died, and which by reason of the death of the same B. are taken into our hand; saving the right of every one, and saving to Maude who was the wife of B. her reasonable dower, falling to her of the said lands and tenements, according to the law and custom of our realm of England, and by us to be assigned. *Witness, &c.*

C And the writ aforesaid lieth, where the heir is of full age at the time of the death of his ancestor, and sueth his livery; but if the heir were in ward, and hath proved his age, then he shall have a writ thus :

The king, &c. Because N. of E. son and heir of B. of C. deceased, who held in chief of lord Edward lately king of England or grandfather, hath sufficiently proved his age before you, as it is found by the proof taken by our command and returned into our chancery; we have taken homage of the said N. of all the lands and tenements which the said B. his father held of our said grandfather in chief on the day when he died, and have rendered him those lands and tenements; and therefore we command you, that you cause him the said N. to have full seisin of all the said lands and tenements, of which the said B. his father was seised in his demesne as of fee in your bailiwick on the day when he died, and which, after the death of the said B. were taken into the hand of our said grandfather, and so taken are in our hand, saving the right of every one, &c. Witness, &c.

D (a) And if the husband seised in fee, in right of his wife be outlawed for felony, for which the lands come into the

(a) So one has no entry, although the estate of the king was determined, because the possession of the king continues. *Bro. Travers* 48. 4 *Aff.* 4. 19 *H.* 6. 20. 22 *Ed.* 4. 3. and *Paget's* case, 34 *Eliz.*

The lessee for life is attainted, the king seizes, the lessee dies, he in reversion was put to his *Monst' de droit*, adjudged in *Scaccario*: And see accor-

dant *Lib. Parl.* 287. *Petitio T. Redman.* See 8 *Co* 170. *Hale's* case. Tenant in tail attainted of treason, and all his right given to the king, saving the right of entry of strangers; the king's estate determines after the death of tenant in tail without issue, without any entry of the donor, &c. *Dyer* 101. See 23 *H.* 6. *Entry Congeable* 53.

king's

king's hands, and afterwards the husband who is outlawed die; a writ of *diem clausit extremum* shall be awarded, which shall be such :

Because A. is dead, whose lands and tenements which he held, of the right and inheritance of N. lately his wife, yet living, came to the hands of lord Edward lately king of England, the fourth after the conquest, by reason of a certain outlawry proclaimed against him for a certain felony, whereof he was indicted, as it is said, and were in the hand of lord Henry our father, and so are in our hand, &c. We command you, that by the oath, &c. you inquire what lands and what tenements by reason of the said felony came to the hand of the said late king, and yet are in our hand, and of whom or of what persons they are holden, and by what service, and how and in what manner, and how much those lands and tenements are worth by the year in all issues, according to the true value thereof, and who or what persons, hath or have occupied those lands and tenements from the time of the perpetration of the said felony, and hath or have received the issues and profits thereof, by what title, and how and in what manner? and the inquisition, &c.

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Quæ plura.

Stamf. Prærog.
52.

THE form of the writ of *quæ plura* is such :

The king to his escheator, &c. greeting : because we are given to understand that A. deceased, who held of us in chief, upon the day when he died held more lands and tenements in the county aforesaid, than are specified in the inquisition thereof taken by our command after the death of the said A. and returned into our chancery; we command you, that by the oath of honest, &c. you inquire what more lands and tenements the said A. held in the said county on the day when he died, and of whom, or of what persons these more lands and tenements are holden, and by what service, and how much they are worth by the year in all issues, and the inquisition, &c.

Stamf. Prærog.
52.

The writ of *melius inquirendo* lieth, where the first office is found by virtue of a writ of *diem clausit extremum*, but it wanteth certainty in divers points, as in the tenure of di-
vers

vers lands, or in the value of any of them, &c. but if the first office be found by the escheator *virtute officii sui*, and not by virtue of any writ or commission, and the office want certainty in divers things, as before; then a *melius inquirendo* shall not issue forth, but the office and inquisition returned shall be taken as void, because it is not found by virtue of any commission or writ, but only *ex officio* of the escheator, without any command to him to do the same; and therefore the same shall be taken as void, if it want certainty in any point.

4 Ed. 4. 22, 23.
Bro. Office 38.

Melius inquirendo.

C THE form of the writ of *melius inquirendo* is such :

The king to the escheator, &c. greeting : whereas by a certain inquisition taken before our escheator in the county aforesaid, by our command, and returned into our chancery, it is found, that N. deceased, held divers lands and tenements with the appurtenances in the said county; and who is the next heir of the same N. on the part of his father the jurors of that inquest do not know; nevertheless on the part of R. mother of the said N. W. the son of B. is his next heir, and of the age of twenty-one years or more : and because in the said inquisition (a) it is not specified, who is the next heir of the said N. we command you, that by the oath, &c. you inquire who is the next heir of the said N. how and in what manner, and the inquisition, &c.

D There is another form of writ of *melius inquirendo*, because it is not specified in the inquisition what estate the tenant had in the lands; or because it is not shewn in the office (b) of whom, the lands were holden; or because the true value is not mentioned in the writ, and the king is informed that the lands are of greater value than is certi-

3 H. 6. 5, 8.
Dyer 269.
Kelw. 200.
14 H. 7. 23.

(a) So if it be found by the *diem clausit extremum*, that J. S. died seised, and that the lands descended to T. as son and heir, and do not shew of what estate he died seised. 3 H. 6. 5.

(b) In such case before the statute 2 Ed. 6. c. 3. it should be taken to be held of the king in chief. Dyer 144. See 2 H. 7. 18.

Writ of Livery.

fied by the office. And note, that a *melius inquirendo* shall be awarded upon a surmise made in court, that the lands are of a greater yearly value than is declared by the office; and upon like reason upon a surmise made, that they are holden by other services, or that the tenant was seised of other lands or other estate than is mentioned in the office, (c) a *melius inquirendo* shall be awarded.

Writ of Livery.

THERE is another form of writ of livery, where ^E the king's tenant *in capite* dieth, his heir within age, and the king seizeth the ward, and afterwards the heir dieth within age, and in ward to the king, for which the lands come unto his heir who is within age, and in ward to the king; now when this heir cometh of full age, he shall have a writ of livery in this form:

The king to his beloved, &c. his escheator in the county of I. greeting: because I. brother and heir of S. son and heir of I. S. deceased, who held of us as of the honour of H. being in our hand, by the service of rendring to the guard of the castle of Dover ten shillings by the year, hath sufficiently proved his age before Roger of W. lately our escheator in the county aforesaid, as it is found by the proof taken by our command, and returned into our chancery; we have taken homage and fealty of him the said I. the brother of S. of all the lands and tenements which the said I. S. the father held of us as of the honour aforesaid on the day when he died, and which after the death of the said I. S. the father, and by reason of the minority of him the said S. (which S. while he was within age and in our custody died) duly came to our hands, and we have rendred to him the said I. the brother of S. all those lands and tenements with the appurtenances; we therefore command you, that you cause him the said I. the brother of S. to have full seisin of all the said lands and tenements with the

(c) See cap. 168. The king shall not have a new *melius inquirendo* after a former (returned, &c.) And Note, this

writ shall not issue where the first writ was sufficient, tho' not (executed). 7 Eliz. 2. 25.

appurtenances, of which the said I. S. the father was seised in his demesne as of fee in your bailiwick on the day when he died, and which by the death of the said I. S. the father, and by reason of the minority of him the said S. come to our hands, and so are yet in our hands by reason of the minority of the said I. the brother of S. saving the right of every one.

F And when an heir shall have livery at his full age, and holdeth one manor in capite of the king by knight's service, and holdeth other lands in several counties of others, then a writ shall issue to the escheator of the county where he holdeth in capite; and the form shall be such: *know you that we have taken homage, &c*; the writs to other escheators being thus: *whereas we have taken homage, &c*.

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A And it appeareth by the writ before, that to hold land (a) to render a certain rent for the guarding of the castle of Dover shall be a tenure in capite, and by knight's service; and it may be that in ancient time he should guard the castle, and that now the king hath taken the rent for the same, and yet the taking of the rent doth not alter the nature of the tenure. *Quere*.

21 Ed. 3. 41.
ac. Of the honour of Berkhamstead. 50
29 H. 8. 24.

B If two men by licence purchase lands holden of the king in capite, and afterwards one of them die, the other shall have the lands (b) *cum exitibus* out of the king's hands, upon the matter found by inquest; but by the Register he ought to shew the licence in the chancery.

C And if the king's tenant who holdeth in socage dieth, his heir of the age of fourteen years and more, and the king seizeth the lands, the heir ought to sue livery of them. But it seemeth the king ought not to seize the other lands which he holdeth of other lords by other services, &c. and if he

4 Eliz. Dyer
213. rule ac.
Plow. Com. 209,
204. 30 Eliz.
Dyer 362.

(a) See a tenure of the honour of Bologn, no tenure in chief, and therefore the land was delivered to the lords. Rot. Claus. 2 Ed. 1. M. 6. and so of the honour of Peverell. Rot. Claus. 4 Ed. 1. M. 16. and Rot. Claus. 3 Ed. 1. M. 11. See Stamf. Prærog. 12. 29. Bant. 175. Bro. Livery 58. 44 Aff. 35. 18 Ed. 3. 22.

(b) Yet see 18 Ed. 3. 21. If the king's tenant aliens with licence to A. for life, remainder to B. in fee, and A. dies: now the king has cause to seize till B. has done his services, and therefore he shall not have an *ouster le main cum exitibus*, except *de gratia*.

do, the other lords shall have a writ of *amoveas manum*, which is called an *ouster le main, una cum exitibus*, &c. so as they shall have (c) the issues and profits thereof which were taken by the king; and the form of the writ is such:

The king to his beloved A. his escheator, &c. Because we have received information by the inquisition which we caused to be made by you, that I. of T. deceased, held in his demesne as of fee, on the day when he died, one messuage, and one oxgang of land with the appurtenances in K. of us in chief, as of the honour of the abbey of M. being in our hand, by fealty and by the service of three shillings and nine pence to be rendred to us yearly, and that he did not hold any other lands and tenements of us in chief as of the crown, in your bailiwick, on the day when he died; by which the custody of the lands and tenements which were the said I.'s on the said day, to us, at present ought to belong, and that on the said day he held divers other lands and tenements, of divers lords, by divers services; and that N. the son of the said I. is his next heir, and of the age of sixteen years and upwards; we have received the fealty of him the said N. for the messuage and lands aforesaid, and have rendred the same unto him; therefore we command you, that having received security of the said N. for his reasonable relief to be paid to us at our exchequer, you cause him the said N. to have full seisin of the messuage and lands aforesaid, which by reason of the death of him the said I. you took into our hand, saving the right of every one; but of other lands and tenements which the said I. held of other lords in your bailiwick on the day when he died, which likewise on that occasion you took into our hand, intermeddle yourself no further, saving our right and every other person's right whomsoever; and the issues (if you have received any) of the lands and tenements which are so holden of other lords deliver to those to whom they belong, &c.

(c) *Sed nota*; *nomine exituum* are not such profits for which the escheator has accounted and paid into the exchequer; nor wards happening and seised, *per Wilby*; nor amerciaments levied; nor an avoidance of a church. 18 Ed. 3. 22. 24 Ed. 3. 29. 39 Ed.

3. 21. and yet such issues for which the escheator has only accounted, but not paid, are restored. 24 Ed. 3. 60.

See *Stamf. Prærog.* 13. b. *Mag. Char.* Gard 3. 38 H. 6. 8. *Livery* 60. 12 H. 8. Gard 77.

And by this writ it appeareth, that the heir in socage being of full age at the time of the death of his ancestor, shall have livery *cum exitibus*; but if he were within the age of fourteen years at the time of his ancestor's death, his *prochein amies* must sue an *ouster le main cum exitibus*: but the other lords shall have an *ouster le main* for the lands holden of them by knight's service *cum exitibus*.

Ant. L.
35 H. 6. 52.
45 Ed. 3.
Stamf. Prærog.
13.
45 Ed. 3. 19.
35 H. 6. 52.
Stamf. Prærog.
13.

D And if the king have the custody of an idiot, and of his lands which are holden of the king *in capite*, and the idiot die, and his heir be of full age; the heir shall have a writ of livery in this form:

The king, &c. to his escheator, &c. Because we have received information by the inquisition which we caused to be made by you, that divers lands and tenements with the appurtenances in O. were taken into the hand of lord Edward some time king of England, our grandfather, by reason of the foolishness and idiocy of W. of P. now deceased, and so are in our hand, and that the same lands and tenements are holden of us in chief, as of the honour of the abbey of M. being in our hand, by the service of the eighth part of one knight's fee, and doing suit at our wapentake of Holderness from three weeks to three weeks, and rendering to the guard of our castle of Skipton at Midlent seventeen pence; and that Geoffrey the son of William de Redmain, cousin of the said W. is the next heir of him the said W. and of full age; we have received the fealty of him the said Geoffrey for all the lands and tenements aforesaid, and have rendered them to him, and we of our especial favour have respited the homage of him the said Geoffrey until the feast of Easter next coming; and therefore we command you, that having received security of the said G. for his reasonable relief to be rendered to us at our exchequer, you cause him the said G. to have full seisin of all the said lands and tenements being in our hands, saving the right of every person whomsoever. Witness, &c.

E And when the heir in ward unto the king is of full age, he shall have a writ out of the chancery unto the keeper of the privy seal, testifying that he is of full age; and thereupon he shall have a privy seal unto the king's chamberlain to receive his homage: and when he hath taken his homage, he shall have writ a from the chamberlain to the chancellor,

testifying that he hath taken his homage; and thereupon he shall have a writ of livery. And all this matter appeareth at large in the abridgments in the title *Livery*, which see there.

Stamf. Prærog.
80. 84.
Br. Livery 69.
35 H. 6.
Livery 15.

And if three coparceners be in ward to the king, the coparcener who first cometh of age shall sue livery, and shall have partition made thereupon. F

And if an heir female be in ward to the king, and hold of other lords in socage; now when she cometh of the age of fourteen years she shall not sue livery of the lands holden in socage, but she shall tarry until her age of sixteen years, if she be not married before that age, for she shall sue livery but once for all her lands, &c. G

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Stamf. Prærog.
80.

And if the heir of full age sue his livery, and omit any parcel of his inheritance, as an advowson, or a reversion, or one acre of land which is not found by the writ of *diem clausit extremum*, and thereupon sue his livery; if it be found afterwards by another office, that his ancestor died seised of that advowson, reversion or acre of land, which was not found by the first office upon which he sued his livery before, then the king may re-seize all the lands, &c. and the heir shall answer the king for all the rents, issues and profits received in the mean time by the heir, &c. A

Stamf. Prærog.
12. b.

If the king's tenant holdeth by knight's service and *in capite*, and also holdeth other lands of the archbishop of Canterbury by knight's service, and dieth seised, his heir within age; the king shall have the lands holden of him in ward, and the archbishop shall have the other lands holden of him in ward: and that is by the statute of *prærogativa regis*, c. 1. And if the king seizeth all the lands, the archbishop shall have an *ouster le main cum exitibus*. B

Stamf. Prærog.
3.

And if the king's tenant who holdeth *in capite* and by knight's service, die seised, and a stranger abate, for which the heir at full age recovereth by assise of mortdauncestor; yet he ought to sue his livery, and to do his homage, and the abator shall answer the king the mesne profits and issues received. And the writ *de Ætate probandâ* may be directed to certain commissioners to inquire of the age of the infant, as well as unto the escheator; and the form of the commission is such: C

Commission pro Ætate probandâ.

D *THE king to his beloved, &c. knew ye that we have assigned you to inquire by the oath as well of knights as of other honest and lawful men of the venue of N. in the county of Lincoln, whether I. the son and heir of B. born at N. and baptized in the church of the same town, and who by reason of his minority is in our custody, be of full age, as he saith, or not; and therefore we command you, that at a certain day and place, which you shall appoint for this purpose, you make that inquisition, and send the same distinctly and openly made to us in our chancery without delay, and this writ; for we have commanded our sheriff of Lincoln, that at the day and place whereof you shall give him notice, he cause to come, &c. In witness whereof, &c. And thereupon a writ shall be sent to the sheriff to return an impanel before the commissioners at a certain day by them appointed; and the writ shall be such:*

The king to the sheriff, &c. We command you, that you summon by good summoners twelve as well knights as other honest and lawful men of the venue of N. that they be before our beloved and faithful A. B. and C. and those whom we have associated unto them, at a certain day and place, whereof they the said A. B. and C. shall make known to you, ready by oath to recognize, whether F. the son and heir of D. born at N. and baptized in the church of the said town, who by reason of his minority is in our custody, be of full age (as he saith) or not; and in the mean time let them go to the said church and town, and diligently inquire the truth of the age of the said F. and cause their names to be put in the writ; and give notice to E. and S. guardians of the land (a) of the said heir,

(a) So the grantees of a ward are made parties; but see 43 Ed. 3. 20. where a *sci' fa'* issued after the return of the commission against the grantee, to shew why he should not have livery; and the grantee came and pleaded, that the value of the marriage was not satisfied to him, and prayed that he

might hold the land till he were satisfied, and the heir did not deny the plea, but went out of court; and thereon the grantee held the land two years, and then issued a *scire facias* for the heir against him, to have the land; the grantee pleads, that the land was seized into the king's hands for that

heir, that they be then there to hear that recognizance, to shew, if any thing ought to hinder, why the said I. ought not to have his lands and tenements: and have there the names of those twelve, and this writ. *Witness, &c.*

And thereby it appeareth, that if the king hath committed the wardship of the land unto another, that the committee shall be warned to be there; but if the king hath the lands in his own hands, then that clause, *and give notice to E. and S. the guardians, &c.* shall be omitted.

And by the rule of the Register, a woman shall do homage and fealty, and shall pay a relief when she sueth her livery, if she be of full age at the time of the death of her ancestors; and if she have a husband, if they have issue when they sue livery, then the husband shall do the homage and fealty; but if they have no issue, then the husband shall do only fealty (b).

And if there be two jointenants, who hold of the king by licence of purchase, and one of them die, the other shall have an *ouster le main cum exitibus*: but if the purchase be made without licence, then not, because that the king shall seize the lands for the alienation without licence.

And if the king's tenant hath lands in several counties, some holden of the king and some of other lords, the writ of livery shall be directed unto the escheator of that county where the land which he holdeth of the king *in capite* lieth, and the writ shall begin, *scias quod cepimus homagium, &c.* and he shall have writs unto the escheators of the other counties; and the writ shall begin thus, *cum ceperimus, &c.*

the heir had not done his homage, and the verdict found that the ward was leased by the king to the grantee, rendring a rent, and seized for the non payment; and after this, notwithstanding, the grantee sued a *valorem maritagii* against the heir, and adjudged that it lay: For seeing the heir was found of full age, he ought to have had livery instantly, though the value of the marriage was not satisfied without any *scire facias* sued against the grantee; and after livery sued, the

grantee has his remedy for the value of the marriage, by — or action; and therefore till livery sued, the profits shall be to the king, and not set by way of recompence for the value of the marriage. See 10 H. 6. 20.

(b) *Note; Bro. Fealty 10 & 16.* Where it is said, that feme covert shall not do services, but her husband for her; and therefore until issue had between them the homage is suspended. See Litt. 18, 19.

Writ of Livery post mortem Patris & Matris.

I **W**RIT of livery after the death of the father and mother &c. lieth where the father and mother hold severally lands in fee of the king *in capite*, and they die, their heir of full age, he may sue a writ of livery to have livery of the lands of them both, and is not bounden to sue several writs, as severally heir to them; and the form of the writ is,

The king to his beloved N. of W. his escheator in the county of S. greeting: know you, that we have received the homage and fealty of R. of B. son and heir of R. of B. esquire, and I. his wife deceased, due to us for all the lands and tenements which the said R. and I. held of us in chief the days when they died, and have rendred to them those lands and tenements with the appurtenances: and therefore we command you, that having received security of the said R. for his reasonable relief to be paid to us at our exchequer, you cause him the said R. to have full seisin of all the lands and tenements aforesaid with the appurtenances in your bailiwick, of which the said R. and I. were seised in their demesne as of fee on the days when they died, and which, after the death of the said R. and I. were taken into our hand; saving the right of everyone. Witness, &c.

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Writ of Livery after the Death of Tenant by the Curtesy.

THERE is another form of writ (a) after the death of tenant by the curtesy, thus:

A *The king to his beloved. &c. his escheator in the county of Lincoln, &c. know you, that we have received the homage of G. of N. son of I. of N. deceased, for all the lands and tenements which the same I. held by the law of England on the day when he died, as of the right of N. lately his wife, now deceased, who held of us*

(a) See 12 Ed. 3. *Quare Imp.* 159.

in chief, the mother of the said G. whose heir he is, due to us, and have rendred those lands and tenements to him; and therefore we command you, that having received security of the said G. for his relief to be paid to us at our exchequer, you cause him the said G. to have full seisin of all the lands and tenements aforesaid with the appurtenances, which, after the death of the said I. were taken into our hand; saving the right of every one. *Witness, &c.*

(b) And thereby it appeareth, that the tenant by the curtesy shall have the lands after the death of his wife, without suing an *euster le main* for those lands holden of the king, but that the heir after his death shall sue his livery for them, &c. because that the tenant by the curtesy remaineth tenant to the king.

And if a man have lands which are held of the king *in capite* by the curtesy, and he have lands in fee, and die; his heir shall sue livery as well for the lands whereof the tenant was seised in fee, as for the lands which he held by the curtesy, although the lands of which the tenant by the curtesy was seised in fee were not holden of the king *in capite*, &c. because that as well those lands are seised into the king's hands, as the lands which he held by the curtesy; and the writ shall be such:

The king to his beloved, &c. escheator in the county of York, greeting: know you, that we have received the homage and fealty of G. the son and heir of W. of S. and I. who was the wife of the same W. of S. deceased, for all the lands and tenements which the said W. of S. his father held as well by the law of England of the inheritance of the said I. some time his wife, after the death of her the said I. as in his demesne as of fee, on the day when he died, and we have rendered to him those lands and tenements; and therefore we command you, that having received security of the said G. the son of W. for his reasonable relief to be paid to us at our exchequer, you cause him the said G. the son of W. of S. to have full seisin of all the lands and tenements aforesaid with the appurtenances, which the said W. of S. his father held as well by the law of England after the death of the said I. some time

(b) A. takes B. to wife, to whom before livery, and after issue had, A. lands *in capite* descend, and she dies sues livery. *Dyer 229.*

his

his wife, as in his demesne as of fee, in your bailiwick, on the day when he died, and which, after the death of him the said W. of S. were taken into our hand; saving the right of every one. Witness, &c.

- B And if the king's tenant die, and after his death the wife be endowed, then after the death of the tenant in dower, the lands which she held in dower shall be seized into the king's hands, and the heir shall sue livery of them; and the writ shall be such:

7 H. 6. 3. Stamf.
Prærog. 13. 2.

Writ of Livery after the Death of the Tenant in Dower.

THE king to his beloved T. of S. his escheator in the county of York, greeting: Know you, that we have received the homage and fealty of our beloved and faithful R. baron of F. due to us for all the lands and tenements which A. who was the wife of R. of N. formerly the wife of R. lately baron of F. after the death of the said R. lately baron of F. the first husband of her the said A. the grandfather of him the said R. now baron of S. held of us in chief on the day when she died, and we have rendered to him those lands and tenements; and therefore we command you, that having received security of the said R. now baron of F. for his reasonable relief to be paid to us at our exchequer, you cause him the said R. now baron of F. to have full seisin of all the lands and tenements aforesaid with the appurtenances, which the said A. held in dower after the death of the said R. her husband the grandfather of the said now baron, of the inheritance aforesaid in your bailiwick, on the day when she died, and which, after the death of her the said A. were taken into our hand; saving the right of every one. Witness, &c.

And by that it appeareth, that tenant in dower who is endowed in the chancery, &c. of lands holden of the king in capite, or of other lands which are in the king's hands by the death of his tenant, shall hold them of the king, and the heir shall have livery of those lands after her death; yet it seemeth that the reversion of those lands which she holdeth in dower remaineth not in the king, but in the

Stamf. Prærog.
13. 2.

heir ; and if she commit waste, the heir shall punish the waste.

There is another form of writ of livery after the death C
of the king's tenant, who holdeth parcel in fee, and other
parcel in tail, or for life, thus :

*Writ of Livery after the Death of Tenant in
Tail and Tenant for Life.*

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THE king to his beloved, &c. his escheator in the county of
Salop and the marches of Wales adjacent to the same coun-
ty, greeting : Because we have received the homage and fealty of
our beloved and faithful I. of B. son and heir of I. of B. the
elder, of all the lands and tenements with the appurtenances
which the same I. held of us in chief, as well in fee as for term
of his life, on the day when he died, and which, after the death
of the said I. the father ought to descend to the said I. the son,
or otherwise remain to the same I. the son and S. his wife, and to
the heirs of their bodies issuing, and we have rendred to him those
lands and tenements ; therefore we command you, that having
received security of the said I. for his reasonable relief to be paid
to us at our exchequer, you cause him the said I. the son to have
full seisin of all the lands and tenements aforesaid with the appur-
tenances, of which the said I. his father was seised in his demesne
as of fee-tail, the reversion whereof belongs to the said I. the son
in your bailiwick, on the day when he died, and which, after the
death of his said father, were taken into our hand ; saving the
right of every one. *Witness, &c.*

And if tenant in tail holdeth of the king in capite, and A
dieth, the heir then of full age, he shall have such writ of
livery.

Writ of Livery for the Heir in Tail.

THE king, &c. Know you, that we have received the homage
and fealty of our beloved W. &c. son and heir of W. of B.
deceased of all the lands and tenements which the said W. his
father

father held of us in chief to him and his heirs of his body issuing of the gift and grant of W. of S. by a fine thereof levied in our court with our licence, on the day of his death, and we have rendred to him those lands and tenements; and therefore we command you, that having received security of the said W. &c.

And if the king's tenant hold by petit serjeanty, and die, and his heir be within age of eighteen years, then he shall have a writ to have seisin of the lands, thus :

Writ of Livery for Lands by Petit Serjeanty.

TH E king to his beloved, &c. his escheator in the county of Suffolk, greeting : Because we have received information by the inquisition which we caused to be made by you, that T. P. deceased held of us in chief in his demesne as of fee, on the day when he died, ten messuages, one hundred acres of land, forty acres of meadow and ten acres of pasture, thirty acres of moor, and twenty shillings rent, with the appurtenances in W. in the county aforesaid, by the service of twenty shillings to be paid yearly to us at the manor of L. for all service, and that he did not hold any other lands or tenements in his demesne as of fee of us or of others in the county aforesaid, on the day when he died, and that W. the son of the aforesaid T. is the next heir of the said T. and of the age of eighteen years and more; we command you, that having taken fealty of him the said W. according to the form of a certain schedule inclosed in these presents, and having received security from the said W. for his reasonable relief to be paid to us at our exchequer, you cause him the said W. to have full seisin of the messuage, land, meadow, moor, and rent aforesaid, with the appurtenances, which, by the death of the said T. were taken into our hand; saving the right of every one. Witness, &c.

And thereby it appeareth, that the heir in socage shall not have livery *cum exitibus*, &c. if he pass the age of fourteen years; but within the age of fourteen years he shall have livery *cum exitibus*, &c. and the same is holden for a difference at this day.

The

Writ of Livery for Lands by Petit Serjeanty.

The king's tenant hath issue a son *D. de B.* and two daughters, and dieth; and the said *D. de B.* hath livery, and afterwards hath issue a son *H. de B.* and dieth, the said *H.* being in ward to the king for his nonage; and afterwards one sister hath issue a son, and dieth, and afterwards *H.* dieth being in ward to the king, and his aunt and the son of the other sister, being of full age, sue to have livery; now they ought to have a writ directed to the escheator, by which it shall be commanded to the escheator to make livery to them, and to make partition between them of those lands which are in the king's hands, so as each coparcener shall have part of the lands which are holden of the king *in capite*; and the writ shall be such:

Stamf. Prærog.
24. b.

Writ of Livery for the Aunt and Niece to make Partition.

THE king to his beloved *A. of H.* his escheator in the county of, &c. greeting: Know you, that we have received the homage and fealty as well of *D. of B.* the son of *A. of B.* one of the sisters of *D. of B.* as of *T. of B.* the other of the sisters of the said *D. of B.* cousin and heir of *H. of B.* son and heir of the said *D. of B.* deceased, who held of us in chief, due to us for all the lands and tenements which the said *D. of B.* held in chief, which by the death of the said *D. of B.* and by reason of the minority of *H.* the son and heir of the said *D. of B.* (which *H.* died while he was under age and in our custody) came to our hands; and we have rendred to the said *D. of B.* and *T.* the lands and tenements aforesaid, and therefore we command you, that having received security of the said *D. of B.* and *T.* for their reasonable reliefs to be paid to us at our exchequer, and having made a legal partition of all the lands and tenements with the appurtenances in your bailiwick, which by the death of the said *D. of B.* and by reason of the minority of the said *H.* came to our hands, and yet remain in our hand, according to the extent thereof made or to be again made (if it shall be necessary) into two equal parts, in the presence of the said *D. of B.* and *T.* or their attornies in
this

this behalf, to be warned, if they will be present, you cause them the said D. of B. and T. to have full seisin of their parts thereof, according to that partition, falling to them, according to the law and custom of our realm of England, saving the right of every one: provided always, that both the said D. of B. and T. have part of the lands and tenements which are holden of us in chief and their own purparty, and each of them be our tenant, with the appurtenances, &c. Witness, &c.

A And if a man and his wife hold a manor of the king in capite in tail, and die, and have issue two sons, and the younger son be found heir by virtue of a writ of *diem clausit extremum*, and of full age, and the king make livery unto him of the manor, and afterwards by another office found by commission, &c. it be found that the elder brother is son and heir, &c. then upon the last office found, the king shall send a *scire facias* directed to the sheriff, to warn him to shew why the manor shall not be re-seized into the king's hand, and he answer the profits received in the mean time. And if the sheriff return the writ served, and that the party is warned, and doth not appear, then the king shall re-seize the lands, and shall make livery of that manor unto the elder brother; and the writ by which the service shall be made, shall be such:

Stamf. Prærog.
18 & 52.

(a) Writ of Livery, and to make void a Livery made before.

THE king to his beloved, &c. his escheator in the county, &c. Whereas we have lately found by the inquisition of H. of S. our escheator in the county aforesaid, taken by our command, and returned into our chancery, that I. the son of H. B. deceased, and T. his wife (who survived the said I. some time her husband, likewise deceased) on the days when they died held in fee-tail to them and the heirs of their bodies issuing, the manor of I. with

Stamf. 52.

(a) And Note; for revocation of a livery made on a false inquisition, as finding the heir of full age, when he was under age. Rot. Parl. 42 Ed. 2. m. 2. the case of Wm. de Septan.

the

the appurtenances in the said county, of us in chief by knight's service, and that T. the son of the said I. and T. then was the next heir of the same I. and T. and of full age, we took the homage and fealty of him the said T. due to us for the manor aforesaid, and rendered to him that manor with the appurtenances, and commanded it to be delivered to him, as by the inspection of the rolls of our chancery fully appears; and afterwards H. B. the son and heir of the said I. and T. beseeching us, that whereas by a certain other inquisition posterior, taken by our command by the said escheator, and returned into our chancery, it is found that the said I. and T. on the days when they died held in fee-tail to them and their heirs of their bodies issuing, the said manor with the appurtenances of us in chief by knight's service, in form aforesaid, and the said H. the son of the said I. and T. of the age of forty-six years, is (the elder brother of him the said T. and) next heir of them the said I. and T. without this, that the said T. is the next heir to the said I. and T. as is supposed by the said first inquisition, we would resume the same manor with the appurtenances into our hands, and command it to be delivered to him the said H. as the elder brother of the said T. and nearer heir of the said I. and T.: and we, willing to be done in this behalf that which is just, by our writ commanded our sheriff of our county aforesaid, that he should give notice to the said T. that he should be before us in our chancery in eight days of Saint Hilary then next, wheresoever it should then be, to shew if he had or knew any thing to say for himself, why the said manor with the appurtenances, together with the issues thereof by him received, ought not to be resumed into our hand, and the same manor delivered to the said H. as the elder brother of the said T. son and nearer heir of them the said I. and T. and why he should not answer to us for the said issues so received by him the said T. and further to do and receive what our court should consider in this behalf; and the said sheriff returned to us, that he gave notice to the said T. that he should be before us in our chancery at the said day, wheresoever it should then be, to shew that which our said writ required; at which day the said T. being solemnly called in the chancery aforesaid, did not appear; wherefore it was considered, that the said manor with the appurtenances, together with the issues thereof received by the said T. should be resumed into
our

our hand, and he should answer to us for the same issues, and the said manor should be delivered to the said S. : we have received the homage and fealty of the said H. due to us for the manor aforesaid with the appurtenances, and have rendered to him that manor with the appurtenances ; we therefore command you, that having resumed into our hand the said manor with the appurtenances in your bailiwick, together with the issues aforesaid, and having received security of the said H. for his reasonable relief, to be paid to us at our exchequer, you cause him the said H. without delay to have full seisin of the manor aforesaid with the appurtenances ; saving the right of every one, and saving to us the issues of the manor aforesaid from the time of the death of the said T. so received. *Witness, &c.*

Writ of Livery and Partition which shall issue out of the Chancery unto the Escheator upon Partition there made.

B **T**HE writ which shall be directed to the escheator to deliver seisin of lands unto one coparcener, or divers, where any of them are within age and in ward, is made in several manners : one manner of writ is when one coparcener is of full age, and the other coparcener is within age, and in the custody of *P.* to whom the king hath committed the wardship ; then by the assent of the king's committee the partition may be made in the chancery during the nonage of the heir in ward ; and then the writ directed to the escheator shall be such :

The king to his beloved I. of W. his escheator in the counties of Somerset and Dorset, greeting : know you, that by the assent of P. &c. guardians of T. of M. the daughter of A. one of the sisters of T. of B. deceased, who held of us in chief, being within age and in our custody, one of the heirs to whom one purparty, and of C. the sister and other heir of the said T. of B. being of full age, to whom the other purparty, as well of the lands and tenements which were Margery's, who was the wife of T. of B. the elder, likewise deceased, held in dower or otherwise for the term
of

of her life, of the inheritance of the said T. of M. and C. on the day which she died, belong; we have assigned to the said C. the manors, lands and tenements underwritten, viz. the manor of, &c. to have it for the purparty of her the said C. falling to her of all the manors, lands and tenements aforesaid, according to the law and custom of our realm, and we have rendered to her the said C. (whose homage and fealty we have received) her purparty aforesaid; and therefore we command you, that having taken security of the said C. for her reasonable relief to be paid to us at our exchequer, you deliver to the said C. the said manor, &c. with the appurtenances in your bailiwick, to have for her purparty aforesaid; saving the right of every one, &c.

If the king's tenant hath issue R. N. his son, and Alice his daughter, and dieth, and afterwards R. N. hath issue a son F. and two daughters E. and C. afterwards R. N. dieth seised, F. being within age, and afterwards F. dieth seised in ward to the king within age; and after his death it is found by virtue of an office by writ, that E. and C. are his sisters and next heirs, and of full age; and afterwards by another office it is found by commission, &c. that M. son of the said Alice, one of the sisters of the said R. N. and J. another sister of the said R. N. father of the said F. was cousin and next heir to the said F. and of full age; upon which the sisters of the said F. came into the chancery, and had a *scire facias* against the said M. son of the said Alice, and the said J. &c. to shew wherefore they should not have livery of the lands as heirs, &c. And that writ of *scire facias* was made returnable the Monday, which was the second week of Lent; by which it appeareth, that the writs which shall be sued in chancery, may be returned there in the vacation time, out of term; and upon the return of that *scire facias*, the said M. came and granted that he was not heir, &c. whereupon the two daughters E. and C. had writ of livery directed to the escheator, reciting all the matter, and reciting in the writ, that the king had respited their homage until a certain day, commanding the escheator that he make partition betwixt them, and that he assign to each of them a part of the land which is holden of the king *in capite*; which writ shall be returned and inrolled in the chancery; and the writ is in the Register, fol. 316.

*Partition and Livery after the Death of Tenant
by the Curtesy.*

B IF it be found by office by virtue of a writ, that *B.* held the manor of *B.* by the curtesy of *England*, in the right of *E.* who was his wife, which manor is holden by knight's service of *P.* as of his manor of *H.* which *P.* is in ward of the king; and it be farther found by the said office, that *B.* is dead, and *M.* and *A.* are his next cousins and heirs, and one of them is within age, and the other of full age: then she who is of full age, shall have a writ of livery to the escheator, that he take security for the payment of her relief, and that he make partition betwixt the two heirs, viz. *M.* and *A.* in the presence of her who is of full age, and in the presence of the *prochein amies* of her who is within age, and that he deliver seisin of her part to her who is of full age, and that he retain in the king's hand the part of the other sister. Which writ shall be returned and enrolled in the chancery, and the writ appeareth in the Register, fol. 317.

And the like writ is in the Register, where the king's tenant dieth, one of his daughters within age, and the other of full age, in the same folio 317.

(a) Partition and Livery for Lands in Socage.

C IF a man holdeth lands of *G.* in socage, as of his manor of *B.* which *G.* and the manor is in the ward of the king for the nonage of *G.* and he also holdeth other lands of other lords by other services, and dieth, and hath issue two daughters, whereof one is within age, and the other of full age; they shall have livery out of the king's hands,

Ant. 256. D.

(a) See a partition repealed by award of the king's council on examination of the escheator, without making the parceners parties. 27 Ed. 3. 83. See 42 Aff. 22. The case of the earl of Pembroke.

sc. the *prochein amies* of the heir within age shall have *livery cum exitibus*, and the other daughter shall have *livery sine exitibus*, and a special writ shall be directed unto the escheator in that case, reciting the whole matter, and that the king hath taken fealty of her who is of full age, and delivered to her her part, commanding the escheator by the writ, that he take security of her of full age for her relief, and that he make partition between the daughters of the socage land; and that he deliver the part of the younger unto her *prochein amies*, with the issues and profits of that part from the death of the ancestor; and that he intermeddle not with the lands holden of the other lords: which writ see in the Register, fol. 318.

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Stamf. Pr. 53.

If the king's tenant hath issue three daughters, and he giveth part of his lands unto one of his daughters in frank-marriage, and one of the other two daughters hath issue within age and dieth, and afterwards the tenant in frank-marriage dieth, his heir of full age, and then the king's tenant dieth, and then by office *virtute brevis* it is found, that the daughter of the king's tenant, and the issue of the two daughters are heirs to the king's tenant, and that the issue of one of the daughters is within age; and afterwards by another office it is found, that the king's tenant gave part of his lands to one of his daughters in frank marriage, for which upon that office found, the other daughter, and the issue of the second daughter, who is within age, have a *scire facias* against the issue of the daughter who was advanced in frank-marriage, to shew at a certain day in the chancery wherefore the lands, of which the king's tenant died seised, &c. should not be delivered to them as heirs only unto the king's tenant; and if the issue of her who was advanced in frank-marriage, being warned by the *scire facias*, and so returned warned by the sheriff, maketh default, or cannot shew matter sufficient to maintain her title; then thereupon a writ of livery shall be awarded to the escheator, rehearsing that the king hath taken homage and fealty of the eldest daughter, and that he hath rendered to her her part, commanding the escheator, that he take security of the eldest sister to pay her relief into the exchequer, and that he make partition in two equal parts in the presence

sence of the parties, if they will come, and that he deliver seisin to the sister of full age of her part, and that he retain the other part in the king's hands for the nonage of the daughter of the other sister. See the writ thereof in the Register, fol. 320.

B If *A.* holdeth parcel of his lands in socage of *B.* which *B.* is in ward to the king, and also the said *A.* holdeth other parcel of his lands of *C.* in socage, who is also in ward to the king for nonage, and also the said *B.* holdeth other lands of several other lords by other services, and afterwards the said *A.* hath issue seven daughters, and afterwards one of the daughters hath issue within age and dieth, and then *A.* dieth, and all that matter is found by office, then upon that office returned, they shall have a writ to the escheator, commanding him that he take fealty of the six daughters for their parts, and for their reliefs to be paid in the exchequer, and that he make partition of all the lands into seven parts in the presence of the parties, if they will be there, and that he deliver full seisin to the six sisters of their parts, and that he keep in the king's hands the part of her who is within age, until the king otherwise command him; and that he deliver the lands and tenements which are holden of the other lords, which are assigned for the part of her within age, unto the *prochein amie* of the infant to whom the inheritance cannot descend, and that he deliver the issue and profits of the lands holden of other lords, than of those lords who are in the custody of the king, to those who of right ought to have them. And after that this writ is awarded to the escheator, if the escheator be removed after he hath made the partition according to the writ, and before the return of the writ, then the sisters may sue forth a new writ to the new escheator, reciting the whole matter, and that the escheator was removed before he had executed the command unto him, commanding the new escheator, that, if the partition be not made, he do all such things as the other escheator ought to have done, and retain in the king's hands, &c.

And then if the new escheator, upon that new writ, return unto the king in chancery, that by virtue of the said

writ he hath made partition of seven parts of those lands, and that he hath retained in the king's hands, the part of her who is within age, and that he hath delivered unto three of the sisters their parts, and that the other three sisters did not come to take their parts, so that they remain in the king's hands; upon such return the said three sisters may come into the chancery, and pray to have a writ unto the escheator, with the transcript of the partition to be inclosed therein, commanding him to take security of them for their reliefs, &c. and that he deliver to them, their parts appertaining unto them, according to the partition made, retaining in the king's hands the part of her who is within age, until he command to the contrary, and that he return the writ, and what he hath done upon the same, under his seal, fully and openly without delay. See the writ thereof in the Register, fol. 319.

And it appeareth by the Register, that, if the king's tenant hath issue two daughters, one of whom is within age, and the other of full age, and dieth, she who is of full age may sue unto the king to have the custody of her sister's part during her nonage, and to sue livery of the other moiety: and thereupon she shall have a special writ unto the escheator, rehearsing that the king hath taken her homage, and hath assigned unto her the moiety of the lands, &c. which appertained unto her for her part, and that he hath committed the custody of the other part unto her, during the nonage of the heir the other coparcener, commanding the escheator by the writ, that he take security of her to pay her relief into the exchequer, and that he deliver seisin of the moiety unto the heir of full age, until the full age of the other coparcener within age, with the issues and profits of the other moiety from the death of the ancestor. And thereby it appeareth, that when the other coparcener within age cometh of full age, they both shall sue forth a new livery jointly. See the Register, fol. 320.

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And it appeareth by the Register, that if a man hath lands in *London* in fee, and hath issue two daughters, and leaseth the lands for life, and dieth, and afterwards the tenant

nant for life dieth, the daughters of full age, and this matter is found by office; the two daughters shall sue forth a writ of livery for those lands; because they are holden of the king in burgage; and the writ shall be directed to the escheator, commanding him to make partition of those lands betwixt the daughters. And if one daughter be indebted to the king, then by the same writ he shall command the escheator, that he retain the part of her who is indebted in the king's hands, until he hath other command, and that he deliver the other part unto the other daughter: reciting in the same writ, that he hath taken homage and fealty of the other daughter: and moreover by the same writ the escheator shall be commanded, that he take security of the other daughter for the relief of that coparcener, if any be due, &c. and that he return the whole matter into the chancery under his seal, &c.

B And if the king's tenant who holdeth of him *in capite* in fee dieth, and hath issue three daughters, his heirs of full age, and another woman who holdeth in dower other lands for term of her life of the assignment of her husband, which lands are also holden of the king *in capite*, dieth, and the reversion of those lands are the inheritance of the said daughters; they shall have one writ of livery unto the escheator for all those lands, reciting the whole matter, and that he hath taken their homage and fealty, or that he hath respited the same till a certain day, &c. and that he render to them their parts, commanding the escheator, that he take security of them to pay their reliefs, &c. and that he make equal partition between them in their presence, if they will appear, and that he give full seisin to each of them of their parts; with such a provision, that each of them shall have part of that rent which is so holden of the king *in capite* for her part, so that each of them be tenant to the king, &c. And it appeareth by that writ, that a rent may be holden of the king by knight's service *in capite*, as well as lands. See the Register, fol. 318.

Writ de Dote assignandâ.

Ant. 274.

THE writ *de dote assignandâ* lieth where it is found by C office, that the king's tenant was seised of tenements in fee or in fee-tail the day he died, &c. and held of the king in capite; then the wife may and ought to come into the chancery, and there make oath that she will not marry without the king's licence: and thereupon the king may assign her dower in the chancery of those manors and lands, (a) and thereupon she shall have a writ unto the escheator where the lands are, which shall be such:

The king to his escheator in the county of B. greeting. Know you, that of the lands and tenements which were N.'s deceased, who held of us in chief, and which, by reason of the death of him the said N. are taken into our hand, we have assigned to I. who was the wife of the said N. the third part of the manors of T. and C. in the county of T. with the appurtenances, and also a third part of the purparty which was his the said N.'s of the court of the liberty of the honour of Winchester, and the view of frank-plodge in the said county of T. to have for her dower falling to her of the manors and purparty aforesaid, according to the law and custom of our realm of England; and also by the assent of Edward prince of Wales, our most dear son, to whom the custody of the manor of R. in the county of Buckingham, which to fifty pounds by the year, and the manor of N. with the appurtenances in the said county of B. which to ten pounds by the year extend, as is found by the extents thereof made by our command, returned into our chancery; we have assigned to the aforesaid I. the said manor of N. with the appurtenances, for her dower of the said manors of R. and N. to have in form aforesaid; and therefore we command you, that you deliver to her the said I. the said manor of N. with the ap-

(a) See Rot. Finium, 1 Ed. 1. M. 21. a command to the escheator to seize all the lands whereof A. was seised, ac etiam quod margeria quæ fuit uxor prædⁱ A. (20 mercⁱ de terra) de terris & tenementis prædictis assignari faciat donec rationabilem dotem ipsam contingent^r secundum legem & consuetudinem sibi fecerit assignari. Et Rot. Claus. 2 Ed. 1. M. 15. accordant.

purtenances

purtenances to have for her dower, as before is said. Witness, &c.

D And when the wife hath made her oath in the chancery, she may have a writ of *dote assignandâ* to the escheator, to assign her dower; and the writ shall recite, that she hath made her oath in the chancery, &c. But the use is to make the assignment of the dower in the chancery, and to award a writ unto the escheator, to deliver the lands assigned unto her; and although the (b) king commit the custody of the land unto another, yet the king may assign dower unto the wife in chancery, and she shall have a writ unto the escheator to deliver unto her that dower, as appeareth by the Register. And the writ shall be such:

The king to his escheator, &c. greeting. Whereas amongst other lands and tenements by us assigned to I. who was the wife of N. deceased, (who held of us in chief) of the lands and tenements which were the said N.'s for dower, we have assigned to her the said I. part of the manor of Grouby with the appurtenances in the county aforesaid, and also a third part of the purparty which was his the said N.'s of the court of the liberty of the honour of W. and the view of frank-pledge in the same county, to have for dower in form aforesaid: we command you, that you cause to be assigned and delivered to her the said I. (whose oath we have received that she will not marry without our licence) the said parts in your bailiwick, in the presence of the guardian of the said manor and third part to be warned by you, if he or his attorney will be present in this behalf, to have in dower as before is said; and when that assignment, &c. Witness, &c. and if the wife after the death of the husband come into chancery, and pray her dower there; the king may grant a writ unto the escheator, commanding him to take security of the wife, that she do not marry herself, and that the escheator assign dower unto her. And the writ shall be such:

The king to his escheator, &c. We command you, that having taken the oath of M. (who was the wife of W. deceased, who

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(b) See *Kelway* 133. it seems the tamen, if it be not good until the heir committee cannot assign dower; *Qu.* sues his livery.

held of us in chief) that she will not marry herself without our licence, you cause to be assigned to her reasonable dower of all the lands and tenements which the said W. some time her husband, held in his demesne as of fee, in your bailiwick, on the day when he died, and which after the death of the said W. were taken into our hand, and in our hand so remain, according to the law and custom of our realm of England falling to her, by the extent thereof made, or by other, if it shall be necessary again to be made in the presence of B. to be warned thereof by you, if he will be present; and when you shall have so made that assignment, send it under your seal distinctly and openly, that we may cause it to be enrolled in the rolls of our chancery, as the custom is. Witness, &c.

And if a man dieth seised of lands which are holden by knights service of any manor, or otherwise, as of any abbey bishoprick or priory or such as are in the king's hands by reason of the vacancy of the abbey or bishoprick, &c. then if the wife will have dower, she ought to sue in the chancery to have a writ directed unto the escheator, to assign her dower; but there the wife shall not make oath, that she will not marry without the king's licence as appeareth by the writ, which is such :

The king, &c. We command you, that, &c. to A. who was the wife of B. deceased, who held (of the abbey of Peterborough lately void, and being in our hand) by knight's service, her reasonable dower of all the lands and tenements, &c. which the said B. her husband held of the abbey aforesaid, in your bailiwick, on the day when he died, and which, after the death of him the said B. are in our hand, &c. (as above.)

And the like writ may be sued by the wife for lands, which her husband held by knight's service of the manor of him, who is in ward to the king by reason of his nonage; but there she shall not make oath, that she will not marry herself, any more than in the case before.

And the king may assign lands in dower in the chancery rendering rent yearly to the king, &c. because the lands exceed the very value of the third part of all the tenements whereof she ought to have dower. And then upon that assignment

A

B

assignment made in chancery she shall have and sue such writ to the escheator.

The king to his escheator, &c. Know you, that of the lands and tenements which were E.'s of B. deceased, who held of us in chief; and which by reason of the death of the said E. are taken into our hand, we have assigned to M. who was the wife of the said E. the manors underwritten, to wit, the manors of B. and C. &c. with the appurtenances in your county, which are extended to one hundred pounds by the year, to have for dower falling to her of the lands and tenements aforesaid, according to the law and custom of our realm of England, rendring thereof tous yearly at our exchequer, so much as it exceeds the dower aforesaid, and therefore we command you, that you deliver to her the said M. the said manors with the appurtenances, to have to her for her dower in form aforesaid. Witnes, &c.

C And if the wife be impotent, so as she cannot come into the chancery to make oath, and to demand her dower, then she may sue a special writ directed to certain persons to take her oath, and to receive attorney for the wife to sue for her dower in the chancery, &c. and the writ appeareth in the Register, fol. 298.

D And if the king make livery unto the heir at his full age, saving unto the wife her dower to be assigned by the king; then if the wife will demand dower, she ought to sue for the same in the chancery; and if she demand her dower there, then shall issue a special writ unto the escheator, that he warn the heir to be in chancery at a certain day, &c. and there the wife shall have the same day to receive her dower, &c. And the writ which shall issue against the heir shall be such:

The king to his escheator, &c. Whereas lord Edward lately king of England our father, on the twentieth day of January last passed, received the homage of T. of B. the son and heir of T. of B. deceased, for all the lands and tenements which the same T. his father held on the day when he died, of our said father, &c. and he rendred those lands and tenements, and commanded them to be delivered, to him, saving the right of every one, and saving to M. who was the wife of the said T. her reasonable dower falling to her of the lands and tenements aforesaid,

said, according to the law and custom of our realm of England and to be assigned to her as the custom is, as appears to us by the inspection of the rolls of the chancery of our said father; and the said M. hath besought us, that we would cause to be assigned to her her dower falling to her of the lands and tenements aforesaid, according to the law and custom of our realm of Eng'and; wherefore we gave day to the said M. that she be in our chancery on the Morrow of all Souls, &c. wheresoever, &c. to receive her dower aforesaid: we command you that you give notice to the said T. that at the said day he may be present at the assignment of the dower aforesaid, if it shall seem to him expedient; and have there the names, &c. and this writ. Witness, &c.

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But if the king maketh livery unto the heir by his writ directed to the escheator, by which writ he commandeth his escheator to deliver unto him seisin of all his lands, &c. saving the right of every one; and he putteth not in the writ these words, *saving to M. who was the wife, &c. her reasonable dower, falling to her of the lands and tenements, &c. and by us to be assigned*: then in that case the wife ought to sue her writ of dowry against the heir, if she will demand dower of those lands, because the king made livery generally of lands by his writ, without any reservation of dower to be assigned by him, &c.

And if the king make a reservation of dower to be assigned by him by his writ of livery which is directed to the escheator, if the wife never demand dower, or if she have dower assigned unto her by the king in chancery; yet after the assignment made by the king, the reversion thereof is in the heir, and he shall not sue livery of that reversion after the death of the tenant in dower, because the writ of livery reserveth not any thing to the king but assignment of dower to the wife; but the writ commandeth the escheator to deliver seisin of all the land, and that the escheator doth, and by that the livery of all the land passeth from the king; and therefore it followeth, that, when the wife is assigned her dower by the king in chancery, yet the reversion remaineth in the heir, &c. sotha the shall not sue a new livery of that reversion after the death of the tenant in dower, &c. *Tamen quere* of that case.

A

B (a) And if the wife be assigned dower in the chancery, and afterward it be surmised by the heir, or by another for the king, that the land assigned to the wife is not extended to the very value, but that the land assigned to her is much more in value than it is extended at, and that the lands which remain in the king's hands are extended to the very value, &c. then the king shall send a writ to the escheator to make a new extent: and upon that writ returned, if it be found that the land assigned to the wife is of greater value, &c. then upon return thereof a *scire facias* shall be awarded against the wife, to shew cause wherefore she shall not be anew endowed, &c. and if she be warned, and make default, it seemeth she shall be new endowed for her default; or if she appear, and cannot say any thing contrary to that new extent, she shall be endowed anew, so as part of the land assigned to her, shall be taken from her at the king's pleasure; or (b) the king may make a new assignment of all that she had in dower, if he pleaseth, and a new writ shall be to the sheriff to deliver her seisin thereof so newly assigned to her: *quare* the use of this point.

If the land assigned to the wife be evicted, she shall have a *scire facias* to reseize the land, and shall be new endowed. 43 Aff. 32. Br. Dower 65.

C And if the wife make oath, that she will not marry herself without the king's licence, and be endowed thereupon, &c. and afterwards she marry without licence, &c. then the king shall send a writ to the escheator that he reseize all the lands which she holdeth in dower, as appeareth by the Register, and not all the other lands which she or her husband had in their own right; and the writ is such:

Ant. 274.

The king to his escheator, &c. Whereas A. who was the wife of I. of B. deceased, who held of us in chief, who lately made

(a) So if the wife's dower be evicted by a title paramount on the record carried into chancery, whereby she was evicted, she may have a *scire facias* to reseize the land, and to be newly endowed of the residue though it be after livery made to the heir.

43 Aff. 32.

(b) See also that if dower be assigned to the wife within age in chancery, and afterward livery is made to the heir, she may have a writ of dower of the residue. 18 Ed. 3. 29.

a corporal

Writ de Levari facias.

a corporal oath that she would not marry herself without our licence, hath already married herself to W. of P. not having obtained our licence for this purpose, as we have received information; we being unwilling that such contempt should pass unpunished, and also willing to see that we suffer no damage in this behalf, command you, that, if it is so, you without delay take into our hand all the lands and tenements which the said W. and A. hold for the dower of her the said A. of the inheritance of the said I. in your bailiwick, so that you may answer to us for the issues forth-coming thereof at our exchequer, until we shall be satisfied for the forfeiture to us thereof belonging, or we shall be moved to give you other matter in charge thereupon. *Witness, &c.*

Writ de Levari facias.

THE writ of *levari facias* is a writ which shall issue D
out of the record, and shall issue sometimes out of the chancery, and sometimes out of other courts where the record is. As if a man be bounden in a recognisance in the chancery in twenty pounds, to be paid at the feast of Saint Michael next following, then if he do not pay the money at the day, a *levari facias* shall be directed to the sheriff, that he levy the sum on his ~~goods~~ and chattels; and the form of the writ is such:

Lands

*The king to the sheriff, &c. Because I. the son of B. ought to E
have paid to M. of B. twenty pounds on the feast of Saint Michael in the year of our reign, &c. as (a) appears to us by the inspection of the rolls of our chancery, and hath not yet paid the same to him, as he says; we command you, that without delay you cause the said money to be levied of the lands and chattels of him the said I. in your bailiwick, so that you may have the same in our chancery on the morrow of the nativity of Saint John the Baptist next coming, wheresoever it shall then be, to be there delivered to the said M. and this you may by no means omit: and have there this writ, &c.*

(a) If the record be sent *coram rege, nobis per recordum quod in cancellaria nostra venire fecimus.* 17 Ed. 3. Brief execute it, the writ shall be *sicut constat* 824.

And

And he may have an *alias* and a *pluries*, *vel causam nobis significes*, directed to the sheriff; and if he will not return the writ, he shall have an attachment against the sheriff.

F And this writ is given by the common law before the statute of *West. 2.* which gave the writ of *elegit*. But this

G writ (*b.*) ought to be sued within the year after the day of payment to be made by the recognisance; for after the year and day of payment to be made, if he do not sue forth this writ, then he ought to have a writ of debt before the statute of *West. 2.* which gave the *scire facias* against him who was so bounden by recognisance; but now by that statute he shall have the writ of *scire facias* to make him come at a certain day into the chancery, to shew what he can say why he ought not to pay the sum, &c. And if the sheriff upon the *levari facias* return, that he hath levied

H ten pounds of the sum, &c. which he hath delivered to the party, &c. then upon that return he who ought to have the money, may sue forth a *sicut alias levari facias* directed to the sheriff to levy the residue of the sum; which writ shall be such:

[266]

The king to the sheriff, &c. Because T. the abbot of B. ought to have paid to R. one hundred pounds, &c. on the feast of, &c. in the year, &c. as appears to us, &c. and did not pay the same, &c. wherefore we commanded you, that without delay you should cause the said money to be levied of the lands and chattels of him the said abbot in your bailiwick, so that you might have the same in our chancery, &c. whereforever &c. to be there delivered to the said R; and you returned to us, that you have taken into your hand at divers times, of the goods and chattels of the said abbot to the value of, &c. which you levied thereof, and have caused

(b) See accordant *per Trew. 8 Ed. 3. 44.* but adjudged *contr. viz.* that if the year be passed after the date of the recognisance, though it be within the year of the day for payment, he is put to a *scire facias*. For *per Ston.* the words of the stat. *West. 2. si recens sit recognitio* relate to the day of making the recognisance, and not

to the day of payment; yet see *8 Co. —contr. ideo quære. 21 Ed. 3. 22.* but clearly if the day of payment be limited by defeasance to be ten years after, there after the ten years, he must sue a *scire facias*. (Note; the defeasance is out of the record.) *Vide infra 266. C. and Note 16 Ed. 3. scire facias 41.*

the said R. to have; we command you, that without delay you cause to be levied the residue of the said debt of the lands and chattels of him the said abbot in your bailiwick, so that you may have it before us from the day of, &c. wheresoever, &c. to be there delivered to the said R. and this you may by no means omit, &c. Witness, &c.

12 H. 4. 17.
13 H. 4. 17.

And if a parson be bounden in a recognisance in chancery in two hundred pounds, to pay at a certain day, &c. and he pay not the same at the day, then the recognissee shall have a *levari facias* directed to the bishop, or a *levari facias* directed to divers bishops, to levy the money of his spiritual goods; and the writ shall be such:

A

The king to the venerable father in Christ, &c. greeting: Because I. parson of the church of S. in the county of H. of your diocese, and T. of L. parson of the church of M. in the county of B. in the diocese of Lincoln, ought to have paid to master F. two hundred pounds on the feast of All Saints, &c. in the year, &c. as appears, &c. as he saith; we command you, that without delay you cause to be levied one hundred and fifty marks of the said sum, of the goods and chattels of him the said I. in your said diocese, so that we may have the same one hundred and twenty marks in our chancery, &c. wheresoever, &c. to be there delivered to the said F. and this you may by no means omit: and have there this writ. We have also commanded W. bishop of Lincoln, that he cause to be levied one hundred and fifty marks, &c. the residue of the ecclesiastical goods of him the said T. in the said diocese, in form aforesaid. Witness, &c.

But if the parson hath lands of his own purchase, he may have a writ to the sheriff to levy the same, &c. but now by the statute of *West. 2. cap. 18.* he may sue forth an *elegit* upon the recognisance made in the chancery, directed to the sheriff, to have execution of the moiety of his lands, and of all his goods and chattels, except his oxen and beasts of the plough, and to deliver them to him for his maintenance; and the form of the writ is such:

B

The king to the sheriff, &c. Because R. on the 11th day of February last past in our chancery acknowledged himself to owe to N. twenty pounds, which he ought to have paid to him on the feast of, &c. then next following, as appears by, &c. of our chancery

chancery, and hath not yet paid the same to him, as he saith; and the same N. according to the statute thereof set forth, hath chosen to be delivered to him for the said twenty pounds, all the chattels and the moiety of the land of him the said R. to be holden according to the form of the said statute, by a reasonable appraisement thereof (except the oxen and beasts of the plough) to be made in the presence of the said R. to be warned thereof by you, if he will be present, cause the same to be delivered to the said N. or his certain attorney, and if those chattels are not of sufficient value to satisfy the said twenty pounds, then cause those chattels, so of less value, by a reasonable appraisement, and also the moiety of the land of him the said R. in your bailiwick by extent, in like manner to be made in your presence in form aforesaid, to be delivered to the said N. or his said attorney, to be holden as his freehold, until the said debt shall be thereof levied, and of that which you shall have done thereupon, make it appear distinctly and openly to us in our said chancery (such a day) wheresoever it shall then be, under your seal; and have there this writ. Witness, &c.

- C (a) And after the year and the day of payment passed of the recognisance, the recognisee ought to sue a *scire facias* against Vide 265. G.

(a) Note; If the party to a judgment or recognisance be returned dead a *scire facias* shall issue first against the executors, and if he has no executors, or if they have not assets, then a *scire facias* shall go against the heir, 7 H. 4. 30. 19 R. 2. Execution 163. and by ancient usage, until the heir was returned dead, or *nihil*, no *scire facias* went against the tertenants. 18 Ed. 2. Execution 142. But he may have a *scire facias* against the executors, heirs and tertenants in the same writ, if he will. 2 Co. 12. Sir William Herbert's case. And as to the heir, 1. He must be said to have lands in fee-simple by descent, otherwise the *scire facias* will be but as against a tertenant. 27 H. 6. Execution 135. 2. It ought to be *tenentibus terrar' quæ*

fuer' the conusees the day of the recogn' or afterwards. 46 Ed. 3. Brief 605. 3. In a *Scire Facias* upon a recognisance in C. B. he ought to name all the tertenants at his peril. (*Quære.*) But it is otherwise, *alibi*. 46 Ed. 3. Brief. 605. 20 Ed. *scire facias* 121. 17 Ed. 2. Execution 139, &c. But now it seems he may have a *scire facias* against the tertenants generally without naming them, and without warning the heir or executor, except the heir has lands. *Rast. Entr.* 446. *Dyer* 208. *Regist.* 57. 7 R. 2. Execution 46, 406.

Scire facias C. tenenti terrarum quæ fuer' prædict' A. the conusor, &c. quare prædict' summa de—de terris & catallis suis levavi, &c. And the writ adjudged good, though the words & *catallia*

against the recognisor, to shew what he can say why the recognisee should not have execution; and if he be returned upon that writ warned by the sheriff, if he do not appear, or if he do appear, and cannot say any thing wherefore he should not have execution, then the recognisee may sue forth the writ of *elegit* to have execution of all his goods, and of the moiety of his lands; and if the sheriff return upon the *elegit*, that the recognisor hath made a feoffment in fee of part of the lands to divers tenants, &c. and that he hath infeoffed the king of the residue; then upon that return the lands whereof the king is seised by that feoffment are discharged. But he may sue a *scire facias* to warn the other tenants to appear at a certain day, to shew cause wherefore the said lands should not be delivered in execution; and if they be warned, and do not appear, or if they come, and cannot say any thing, &c. to bar the execution, then the recognisee shall have execution against them of those lands by writ of *elegit*, &c. but he shall have the *elegit* before that he sueth the *scire facias* against those tenants.

And if a man be bounden by recognisance in the chancery, and the recognisor have certain indentures of defeasance; then, if the recognisee will sue execution upon the recognisance, the recognisor may come into the chancery and shew the indentures of the defeasance, and that he is ready to perform them, and thereupon he shall have a *scire facias* against the recognisee returnable at a certain day in the chancery; and in the same writ he shall have a *superedeas* directed to the sheriff that in the mean time he do not execution by virtue of the writ sued forth by the recogni-

D

catallis had not been therein. 30 Ed. 3. 23. It seems he shall not have a *scire facias* against the tertenants, till a *scire facias* sued against the executors, and *nihil* returned. 7 H. 4. 31. 19 R. 2. Execution 163. And Note; A *scire facias* and a *tebatum* in another county, amount to a *scire facias*. 18 H. 6. 17. Execution 3. And if any other be tertenant, who is not returned warned, the *scire facias* shall be against

him, and so he may delay execution 41 Ed. 3. Execution 37. And if the one comes and pleads, but the other makes default, judgment shall not be given on the default, till the plea be determined. 6 Ed. 3. 15. Execution 103. And if on the issue it be found against the tenant, yet no land shall be put in execution, but only the land of the conusee in his hands, 33 Ed. 3. Execution 162. See Rast. 64.

see.

sec. And if the sheriff upon any such writ return, that he hath sent to the bailiff of the liberty to do execution, which bailiff hath returned him no answer; then upon that return he shall (a) have a new writ directed to the sheriff, with a *non omittas* therein, that he enter the franchise and do execution, &c.

[267]

A And a man may sue execution by *scire facias* upon a recognisance made in the time of another king in the chancery, or in the common pleas, or in any court of record. And the king may by his commission give authority to one to receive a recognisance of another man, and to return the same into the chancery; and by virtue of that commission, if a man before the commissioners acknowledge a debt to be paid to another at a certain day, &c. and certify the same into the chancery with the commission, &c. then upon the certificate thereof, if he do not pay the debt at the day, he shall have an *elegit* upon the recognisance so taken, as well as if it were taken in the chancery; and the form of the commission is such:

The king to his beloved and faithful R. of M. greeting: Know you, that we have given you power of receiving the recognisance which I. of H. shall be willing to make before you to G. of T. of any sum of money whatsoever; and therefore we command you, that when you shall have received that recognisance, you certify us in our chancery, under your seal distinctly and openly, thereof, and of the day or days of payment, and also of the day of taking the same, sending to us this writ. Witness, &c.

And there is another form, thus: *The king, &c. Know you that we have given you power of receiving for this time, in our name, the recognisance which I. of T. shall be willing to make before you of any debt whatsoever; and therefore we command you, that when you shall have received that recognisance, you certify us, &c. thereof under your seal distinctly and openly, &c.*

(a) So it was done where beasts had been detained, and no delivery made to the plaintiff. *Rast. Entr.* 546. See 12 Ed. 3. *Scire Facias* 117. 2 Ed. 3. *Execution* 129. 14 Ed. 3. *Execution* 73.

And by that commission he hath general authority to take recognisance of any man who will acknowledge any debt before him to any person whomsoever, &c.

See before 130.
H.

If a man be bounden in a recognisance in one hundred pounds, to pay at five several days twenty pounds, then immediately after the first day of payment is past, he may

B

sue an *elegit* for twenty pounds, and at the second day he may sue another *elegit* or *levari facias* of other twenty pounds, and so of all the twenty pounds, every day of pay-

So note, that *capias ad satisfaciend.* lieth not upon a recognisance. 34 H. 6. 45. 48 Ed. 3. 14. 10 Ed. 3. Execution 137.

V. 38 Ed. 3.
12. Br. Execu-
tion 42.

ment, and he shall have such writ of *elegit* for the payment that shall be made at that day, and shall not stay his suit till all the days of payment are past.

(a) And if two be bound in recognisance in chancery, to wit, each of them for the whole acknowledged himself to owe, &c. he may sue several *scire facias* against them to have the money levied of their goods and lands, &c.

C

If a man be bound in a recognisance in chancery, or other court of record, and afterwards the recognissee die, his executors may sue forth an *elegit* to have execution of the lands of the recognisor: and if the sheriff return that the recognisor is dead, then the executors shall sue a special *scire facias* against the heir of the recognisor, and against those who are tenants of the lands which he had at the day of the recognisance made; and that writ of *scire facias* shall recite and shew, that the executors who sue the writ have elected to have the moiety of the lands which the recognissee had at the making of the recognisance; and the form of the writ is,

D

The king to the sheriff, &c. Whereas I. of W. (such a day and year) &c. in our chancery acknowledged himself to owe to N. lately duke Lancaster, one hundred pounds, which he ought to have paid to him on the feast of, &c. then next coming, as

(a) Note; If the one be in by descent, and within age, execution shall tarry against all. 24 Ed. 3. 56. 29 Aff. 37. and the others in a *scire facias* against them may shew this. 29 Ed.

3. 39. adjudged, and affirmed in error, where the conusor died, his heir being within age, and the others warned by *scire facias*.

appears

appears, &c. and hath not yet paid the same to him, as it is said: and W. B. and C. executors of the said late duke deceased, according to the statute thereof set forth have chosen to be delivered to them for the said one hundred pounds, all the chattels, and the moiety of the land of him the said I. of W. to be holden according to the form of the statute aforesaid; wherefore we commanded you, that you should give notice to the said I. of W. that he should be in our chancery (such a day) next following, wheresoever, &c. to shew if he had or knew any thing to say for himself, why all his chattels and the moiety of his land ought not to be delivered to the said executors for the said one hundred pounds, according to the form of the statute aforesaid; and you have returned to us, that the said I. of W. is dead: we command you, that you give notice to the heir of him the said I. of W. and also to the tenants of the land which was his the said I.'s of W. on the day of the recognisance aforesaid, that they be in our chancery, &c. next coming, wheresoever, &c. to shew if they have or know any thing to say for themselves, why the moiety of the land which they hold of the land aforesaid, ought not to be delivered to the said executors for the said one hundred pounds, according to the form of the statute aforesaid; and have there the names of those by whom, &c. Witness, &c.

And thereby appeareth, that if a man be bounden in a recognisance, &c. although the recognisee die, yet his executors cannot sue forth an *elegit* to have execution of the recognisance within the year after the day of payment, without suing forth a *scire facias*, against the recognisor, &c. But against the heir of the recognisor or the tertendants, the recognisee or his executors ought to sue forth a *scire facias*, &c. otherwise if they be ousted, &c. by such execution of their lands, they shall have an assise of novel disseisin, &c.

14 A. 7. 16. 15
A. 7. 16.

Writ de Idemptitate nominis.

E] **W**HERE a man is sued in a personal action, and upon the *capias* or *exigent* awarded, another man who beareth the same name, is arrested by force of the writ,

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then

then he who is so arrested shall sue forth this writ of *idemptitate nominis*; and this writ shall be directed sometimes to the escheator, if he or his goods be arrested by him, or unto the sheriff, if he be vexed or molested by him; and the form of the writ is such:

[268] (a) *The king to his beloved I. of S. his escheator in the county of Lincoln, greeting: Whereas lately (as we have received information) I. of R. of London, taverner, now deceased*

(a) *Note*; In the case of *Wilson and Stubbs*, it was resolved, that if in a writ against *J. S. J. S. the elder* is taken after judgment, it shall be intended *J. S. the elder*: And yet after judgment *J. S. the younger*, if taken cannot have an *idemptitate nominis*, but false imprisonment; but see the precedents *contra*, viz. *P. 36 H. 6. Rot. 48. John Skeyt's case, M. 20 H. 7. Rot. 136. Fuller's Case. See 5 Ed. 4. 48.* otherwise if it was a *capias utlagatum*, for there the king is interested. *20 Ed. 3. Brief 683.*

What shall be said the same name or not. If *J. de D.* be outlawed, and *J. D.* taken, he shall not have an *idemp' nominis*, but trespass; *per Culpeper*; and see there a writ brought against *J. de D.* and process continued against *J. D.* and a protection purchased by *J. D.* the process shall be amended by the statute *14 Ed. 3.* but the protection was not allowed *licet constabat esse eandem personam*; but otherwise had the protection been purchased before the writ. *11 H. 4. 70.*

If a writ be against *J. G.* and the sheriff takes *J. C.* he shall not have an *idemp' nominis*; but if a writ comes against *J. G. de B.* and the sheriff takes *J. G. de C.* he shall have it. *1 H. 5. 5. b.* and by *Litt.* he may have trespass, if he will. *2 Ed. 4. 7.*

Note well: if *J. C. butcher*, be outlawed, and *J. C. husbandman*, be taken by *capias utlagatum*, he shall be discharged by plea; for it affirms the

outlawry good against *J. C. butcher*; but if trespass or debt be brought against *J. C. de D. butcher*, and there comes *J. C. de B. husbandman*, and appears and pleads, and he is outlawed after judgment: now if he be taken he shall not avoid it by saying, that *J. C. de B. butcher*, against whom the action was brought, and *J. C. de B. husbandman*, who now appears, are divers persons, and that he is not the same person against whom the original was purchased; but he shall say further, that he did never appear upon that original; for if he has appeared and pleaded, he is as well liable, as if he were the same person. But by *Pafton*, he shall not have such an issue in avoidance of a record, no more than in avoidance of a fine levied in another name; I shall not say I am another person, or that I never appeared. *19 H. 6. 58.* And it seems without such special shewing he shall not come and say, that he is not the same party, or that he did not appear, without shewing that the other of the same name did. *Quere. 2.* It seems that the other may say, that he whom he alleges did never appear. See *10 Ed. 4. 16. 2 H. 6. 19.* where one came in by *capias pro fine*, and said that he never did appear, &c. and it was not allowed; but he afterwards shewed, that another of the same name did appear, *absque hoc*, that he himself did ever appear; and it was held good. *22 H. 6. 18.*

(as it is said) for that he came not before our justices of the bench to answer to R. for the time wherein he was receiver of the money of him the said R. was put in exigent in our husting of London to be outlawed, and for that reason was outlawed on Monday next after the feast of Saint Peter in the chair, in the tenth year of our reign; and now we understand on the behalf of I. of R. of London, baker, that although he is not the same I. of R. who was outlawed at the suit of him the said R. neither have any goods and chattels, which were the same outlawed person's, come to his hands; nevertheless you, because of the identity of such name and surname of I. of R. pretending him the said I. of R. of London, baker, to be the same I. of R. of London, taverner, who was so outlawed, intend to seize into our hand the goods and chattels of the same I. of R. of London, baker, by colour of the said writ to take into our hand of the goods and chattels which the said I. of R. of London, taverner, had in your bailiwick on the day of the proclamation of the said outlawry, and many ways unjustly disquiet him upon that occasion, to the great damage and grievance of him the said I. of R. of London, baker; whereupon he hath besought us for a remedy to be provided for him by us; and because we will not that he the said I. of R. of London, baker, be unduly aggrieved, we command you, that if by inquisition or other means it shall lawfully appear to you, that the said I. of R. of London, baker, is not the same I. of R. of L. taverner, who was so outlawed, nor that any goods or chattels which were his the said outlawed person's on the day of proclamation of the said outlawry, came to his hands, as is said, then wholly surcease the taking of the goods and chattels of the said I. of R. of L. baker: provided always, that you answer to us for all the goods and chattels which the said I. of R. of L. taverner, had in your bailiwick on the day of proclamation of the outlawry aforesaid (if any there were) as it is just. *Witness, &c.*

A And so if a man be distrained by process out of the exchequer to account, &c. for another person who hath the same name which he hath, then he shall sue this writ to the barons of the exchequer and to the treasurer; and the writ shall be such:

The king to his treasurer and barons of the exchequer, greeting : J. Clerke of N. hath shewed unto us, that whereas one J. Clerke, on the day when he died, was bounden in a certain account to be rendred to us of the issues of the passage of Green Castle, which J. Clerke is dead, and was called, while he lived, J. Clerke of A. as it is said; and because the said J. Clerke of N. hath the same name and surname as the said J. Clerke of A. you unjustly cause him many ways to be disquieted, and to render to us an account of the issues aforesaid, as we have received information; whereupon the said J. Clerke of N. hath besought us, that we would assist him with a remedy in this behalf; we, as well for ourselves as for the same J. Clerke, willing to be done that which shall be just, command you, that if by any Memoranda of the said exchequer, or by inquisition thereof (if it shall be necessary) to be taken, you shall find that he the said J. C. of A. had our commission of that office, and received the issues thereof by virtue of such our commission, or in other manner, and that he the said J. Clerke of N. had not such our commission, nor in any thing intermeddled therewith, and that he the said J. Clerke, of N. because of the (a) identity of his name and surname, and for no other cause, was impeached before you, then cause him the said J. Clerke of N. to be discharged and quiet of rendring to us an account of the issues aforesaid at the same exchequer (a), as it shall be just, making due process against the said J. C. of A. if he be living, or against his heirs, executors or the tenants of the lands and tenements of him the said J. C. of A. if he shall be dead, as the law requires. Witnes, &c.

27 H. 8. 1.
17 Ed. 3. 9.

13 H. 4. 12.

And if a man be taken by a *capias utlagatum*, he may sue B
forth a writ *de idemptitate nominis* in the chancery directed to the justices of the common pleas, if the process be sued there, or unto the justices of the king's bench, if the process be there, commanding them to make inquiry, &c. as afore is said, &c. so that this writ seemeth but as a commission

(a) Note; The *idemptity* here is of both names; and see *Dyer* 5. That it does not lie of two names of baptism, but only of surnames.

(a) So Note; The *tertenants* are charged to account, and the land is

charged, although that no judgment was given *pro rege*, viz. in *defectu execution* J. C. de D. See *Dyer* 225. Sir Will. St. Loe's Case.

to make inquiry, and to know the truth; and upon that writ directed to the justices, they shall award a writ unto the sheriff to (b) make the inquiry, &c. but if a man be outlawed in the common pleas, and taken by *capias*, he may come into the common pleas and pray a writ of inquiry, whether he be the same person, without suing the writ *de idemptitate nominis*.

27 H. 8. 1. 14.
Ed. 3. Br. 271.

And if an *exigent* be to be awarded against one, if a person who hath the same name come, and say that he is ready to answer, then the plaintiff (c) may say that he is not the same person, and then the plaintiff shall put a diversity of the names, and the same shall be entred, and then the *exigent* shall be awarded according to that difference which the plaintiff hath made.

14 H. 4. 27.

(d) At the *exigent* returned the defendant appeareth by *supersedeas*, and the plaintiff saith, that he that appeareth is not the same person: and the opinion of *Hanke* was, that he shall be put to his *idemptitate nominis*, and shall not avoid the outlawry by any other way.

9 H. 4. 3.

C And if an *exigent* be to be awarded upon an indictment, if one cometh and saith, that he hath the same name as he against whom the process upon the indictment is awarded, and prayeth that the king's attorney may put a difference of their names; the same shall not be done, for that should change the indictment, because the process ought to be made according to the indictment; and if he be grieved by the process, he must sue forth the writ *de idemptitate nominis*, and shall not have other remedy, &c. And he may have that writ to the justices of the peace, if they award process of utlagary upon indictments taken before them, and also to the justices of gaol-delivery, as appeareth by (e) the Register, fol. 195, 196.

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(b) Or alleges that he is named J. S. and not J. R. as the writ supposes; and thereupon he shall have a *scire facias* against the plaintiff in the suit, &c. See 1 H. 5. 5.

(c) And if he does not say so in the writ, it shall abate. 18 Ed. 2. Brief 834.

(d) But if there be a diversity of names in this case, on such plea, &c. an *exigi de novo* shall issue against the other; per *Hull*. 14 H. 4. 27. and so in a *præcipe*, summons *ad warrantizand*, &c. 19 H. 6. 58.

(e) Note; At the *pluries capias* one appeared who had the same name,

Writ de Homagio respectuando.

THE writ of respite of homage lieth, when the heir A
cometh of full age who holdeth of the king *in capite*,
and ought to sue his livery, then the order is, that he first do
homage to the king, and thereupon have his writ of livery
to the escheator; but the king of grace and favour may
respite his homage as he pleaseth: and thereupon he shall
have a writ unto the escheator testifying the same, and
commanding him to deliver him seisin of the lands; and
the writ shall be such (a):

*The king to his beloved, &c. his escheator, &c. Know you,
that we have respited the homage of I. the sister and heir of I.
the son of T. of B. deceased, due to us for all the lands and tene-
ments which the aforesaid I. her brother held of us in chief, on
the day when he died; until the feast of Saint Michael next
coming, and have rendred unto her those lands and tenements:
and therefore we command you, that having received security,
&c.*

(b) Writ de Hæretico comburendo.

NOTE, It appeareth by *Britton* in his book, that those B
persons shall be burnt who feloniously burn others
corn, or others houses, and also those who are forcerers or
forceresses;

and the plaintiff said he was not the
same person; and for that he had not
put the diversity of the names in his
writ, it abated. 22 Ed. 4. 14. 8
Ed. 3. 19. 18 Ed. 2. Brief 834.

(a) But if the lord takes homage
of the heir within age, he is thereby
out of ward, *per Bro. Homage* 9. *vide*
ant. 142. *con.* and so the law seems to
have altered in this point.

(b) Note; Until the time of H. 4.
no person was put to death for opi-

nions in religion in England: see the
reason hereof in *Taylor's Liberty of*
propheying, p. 1025. *sect.* 13. *Baker's*
History 345. and *Sanderson's History*
10.

See the cases of *Anne Knell* and
Anne Askerw, burnt 4 Ed. 6. for deny-
ing Christ to have taken his flesh of
the Virgin Mary. *Heylin's history* 88,
89. and *Burnet's history of the Re-*
formation, first part 27. where the
temporal courts adjudged what was
heresy.

forcereſſes; and ſodomites and hereticks ſhall be burnt; and it appeareth by that book, *lib. 1. cap. 17.* that ſuch was the common law. (c) But note, that the perſon who ſhall be burnt for hereſy ought to be firſt convicted thereof by the biſhop who is his dioceſan where he dwelleth, and abjured thereof, and afterwards, if he relapſe into that hereſy or any other, and thereof be condemned in the ſaid dioceſe, then he ſhall be ſent from the clergy to the ſecular power, to do with him as it ſhall pleaſe the king, &c. And then it ſeemeth the king, if he will, may pardon him the ſame; and the form of the writ is ſuch:

C The king, &c. to the mayor and ſheriffs of London, greeting: Whereas the venerable father Thomas archbiſhop of Canterbury, primate of all England, and legate of the apoſtolic ſee, with the conſent and aſſent of the biſhops and his brothers the ſuffragans, and alſo of the whole clergy of his province (a) in his provincial council aſſembled, the orders of law in this behalf requiſite being in all things obſerved, by his definitive ſentence pronounced and declared W. Sawtre (ſometime chaplain condemned for hereſy, and by him the ſaid W. heretofore in form of law abjured, and him the ſaid W. relapſed into the ſaid hereſy) a manifeſt heretic, and decreed him to be degraded, and hath for that cauſe really degraded him, from all clerical prerogative and privilege, and hath decreed him the ſaid W. to be left, and hath really left him, to the ſecular court, according to the laws and canonical ſanctions ſet forth in this behalf, and holy mother the church hath nothing further to do in the premiſſes: we therefore, being zealous for juſtice, and a lover of the catholic faith, willing to maintain and defend holy church, and the rights and liber-

hereſy. See alſo good matter in *Petit, Brook 458.* and *13 Co. 59.* *Mutton's Caſe.*

(c) See *12 Co. 56, 57, 93.* That by the common law no biſhop could convict of hereſy as to loſs of life, but only as to penance *et pro ſalute animæ*: but in the caſe of life, the conviction by the common law ought to have been before the archbiſhop in convocation.

See *Petit's collections 72, 73,* the writs and proceſs for burning *Barthol. Legate* and *Anne Wightman.* *Temp. Jac. 1.*

(a) See *Bro. Hereſy 1.* That if one will abjure a ſecond hereſy, yet he ſhall be burnt; and that although the ſecond hereſy be in another point of faith. See *Inſtit. Juris Canon. 144, 145.*

ties thereof, and (as much as in us lies) to extirpate by the roots such heresies and errors out of our kingdom of England, and to punish heretics so convicted with condign punishment; and being mindful that such heretics convicted in form aforesaid, and condemned according to the law divine and human by canonical institution, and in this behalf accustomed, ought to be burnt with a burning flame of fire, command you, most strictly as we can firmly injoining, that you commit to the fire the aforesaid W. being in your custody, in some publick and open place within the liberties of the city aforesaid, before the people publickly, by reason of the premisses, and cause him really to be burnt in the same fire, in detestation of this crime, and to the manifest example of other christians: and this you are by no means to omit, under the peril falling thereon. *Witness, &c.*

(b) And by this writ it appeareth, that a man ought to be convicted of the heresy by the archbishop and all the clergy of that province, and abjured for the same, and afterwards a-new convicted and condemned by the clergy of the same province, and that in their general council of convocation. But now by the statute of 2 *Hen. 4. cap. 15.* it is enacted, that every bishop in his diocese may convict a man of heresy, and abjure him, &c. and afterwards convict him a-new thereof, and condemn him, and warn the sheriff or other officer to apprehend him, and burn him, &c. And that the sheriff, or other officer ought to do the same by the precept of the bishop, and without any writ from the king for that purpose. And that is the cause (as it seemeth) that that writ is not put into the new Registers, because that writ ought not at this day to be sued forth, but is as it were void by reason of the said act.

(c) But now by the statute made *Anno 25 H. 8. c. 14.* that statute which was made *anno 2 H. 4.* is repealed and made

(b) See the book of *Entries* tit. *Indictment*, an indictment before commissioners for heresy, a *capias* awarded, and the party delivered to the ordinary.

(c) See the statutes, and note by 25 *H. 8. c. 14.* the stat. 2 *H. 4.* is re-

pealed; and by 1 *Eliz. c. 12.* the statute 5 *R. 2. c. 5.* and 2 *H. 5. c. 7.* and 25 *H. 8. c. 14.* are repealed; and by 1 & 2 *Ph. & Mar. c. 6.* the statutes 5 *R. 2.* 2 *H. 4.* and 2 *H. 5.* are revived; and by statute 1 *Eliz. c. 1.* the stat. 1 & 2 *P. & M. c. 6.* and 5 *R.*

made void. And now it is enacted by this late statute, that he who is abjured for heresy, and afterwards, falleth into relapse, and is convicted thereof before the ordinary, ought not to be committed to the lay power to be burnt, without the king's writ first obtained for that purpose, as appeareth by the said statute of 25 H. 8. cap. 14. more at large.

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Writ upon the Statute of Marlebridge for a Fine for Non-fair pleading.

A **T**H E writ upon the statute of *Marlebridge* for not fair pleading lieth, where the sheriff or other bailiff in his court take a fine of the party, plaintiff or defendant, because he did not plead fairly, &c. And the writ shall be directed to the sheriff himself, or bailiff, or him who will demand such fine; and it is a prohibition to him, commanding him that he do not demand such fine; and it may be sued by the whole hundred, or by all the county together, where he will require such manner of fine of them; and the writ is such:

B *The king to the sheriff, &c. Whereas it is provided by the common council, &c. that neither in the circuits of justices, nor in counties, hundreds, or in courts barons, thenceforth any fines shall be taken of any man for fair pleading, nor so that any occasion shall be; we command you, that for the time to come you do not exact, or cause to be exacted of W. such fine, against the form of the provision aforesaid; and the distress, if any, &c.*

R. 2. 2 H. 4. 2 H. 5. are all repealed; so that this now stands as at common law before those statutes.

And Note; by the statute 29 Car. 2. c. 9. this writ *de hæretico comburendo* is abolished, *laus Deo*.—The pious and excellent judge, to whom this exclamation is ascribed, according to the

Biogr. Brit. and the life prefixed to his history of the Pleas of the Crown, died 25th December 1676, 28 Car. 2. and the session in which this laudable abolition took place, appears to have begun near two months afterwards, viz. 15th February 1676, 7. 29 Car. 2. 2. Wooddes 523. n. a.

And

And for the hundred the writ shall be such : *we command you, that for the time to come you do not exact, or cause to be exacted from the commonalty of the hundred of I. such fine, against the form, &c.*

And by the rule in the Register it may be against any other man who will distrain for such fine, and he may have an *alias* and a *pluries*, and an attachment upon the same : and if after the first writ of prohibition delivered he distrain for such fine, then the party who is distrained may sue forth an attachment against the sheriff or bailiff, or him who distraineth him ; and the form of the attachment is such :

The king to his coroners in the county of Lincoln, greeting : if A. shall make you secure, &c. then put, &c. B. our sheriff, or our sheriff, of the county aforesaid, that he be before our justices, &c. to shew wherefore, whereas it is provided by the common council, &c. (as above) of any man for fair pleading, nor so that any occasion shall be, the said sheriff, (or the said bailiff) hath distrained the said A. for such fine to be paid in the county aforesaid, against the form of the provision aforesaid, and against our prohibition ; and have there, &c. and in the mean time cause the beasts of him the said A. taken upon that occasion, to be delivered. Witness, &c.

Attachment
upon a prohibi-
tion. Br. 13.
Vide 9 H. 6.
61. & 19 H. 6.
64. Ascue.

But note, that he may sue forth this writ of attachment against the sheriff, or other, altho' that he never sue forth any writ of prohibition before directed to the sheriff or bailiff ; but then he ought to be distrained for that fine ; for the statute in itself is a prohibition to the sheriff, and to all others, that they do not distrain for such fine for fair pleading ; but if the sheriff, or other, demand such fine, and do not distrain for the same, then he cannot have a writ of attachment for such demand made, because he is not damaged by the demand, &c.

Grants made by the King expressed and contained in the Register to be remembered.

TH E king to the bailiffs and honest men of the town of P. D
greeting : know you, that of our especial favour we have granted to you in aid of paving the said town, that from the day
of

of the making these presents, until the end of five years next following, you may take in the said town the customs underwritten, to wit, for every carriage on horseback, &c. And therefore we command you, that you take the said customs until the end of the said term, as before is said; but the said term of five years being completed, the said customs shall absolutely cease and be taken away. In Witness, &c.

Grant of a Stewardship.

E **T**H E king, &c. Know you, that we have granted to our beloved and faithful W. of H. the office and government of the stewardship of, &c, with all things belonging to the said office, during our pleasure: and therefore we command you, that you obey, answer, and faithfully attend him the said W. in all things as steward. In witness whereof, &c.

Grants of Letters Patent.

F **S** E E in the Register notable forms of grants of letters patent made by the king in divers manners, especially among the writs of *ad quod damnum*, and also after the writs *de corrodio habendo*. And there is a patent made, of the custody of the king's forest, in recompence of a certain sum granted to any one by the king for his life.

And other patents there made upon indentures between the king and others, upon a borrowing of money by the king, by which patents the king granteth to hold and keep covenant, &c.

The grant of the king of the first benefice which shall happen to be void is such:

The king to his chancellor who now is, or who shall be so for the time being, or keeper of his great seal, greeting: we heartily desiring the promotion of our beloved clerk A. for his good service done, as well to lord Edward some time king of England our grandfather, as to us, and willing to follow him (from the consideration

sideration premised) with our gracious favour, will that he the said A. be presented to the first ecclesiastical benefice that shall become void, exceeding the taxation of twenty marks, which shall belong to our presentation, and which he shall think fit to accept: and therefore we command you, that you cause him the said A. to have our letters of presentation to the first ecclesiastical benefice that shall become vacant, which shall so belong to us, and which he shall think fit to accept, under our great seal in form aforesaid. In witness whereof, &c. Witness, &c.

But such grants are not in use at this day.

A grant of the king to one of his chaplains of a yearly A pension out of the exchequer, until he be promoted unto a benefice, is thus :

The king to all to whom, &c. greeting: we regarding the grateful and laudable services which our beloved clerk A. hath before these times willingly done for us, whereof we are certainly informed, as well by our beloved and faithful W. as by others our faithful subjects, hoping that in our business to be done, from the purity of his affection and benevolence he will continue in successive acts for the future, and willing to follow him with our gracious reward, have granted to him a certain annual pension of twenty marks to be received every year at our exchequer, at the feasts of Easter and St. Michael by equal portions, until he shall by us be provided within our realm of England of an ecclesiastical benefice which he shall think fit to accept. In witness, &c. Witness, &c.

There is another grant in the Register, fol. 295. made B by the king to one, to give him authority to reconcile the king's enemies who have left their obedience, and adhered unto the king's enemies, &c. and to grant pardon to them; and the grant is such :

The king to all and singular, &c. to whom, &c. greeting: know ye, that we fully confiding in the approved fidelity and provident circumspection of our beloved and faithful Anthony Lucy, have given to him the said Anthony, by the tenor of these presents, full power of receiving to our faith and peace, the men of the parts of Galloway in Scotland, not being in our faith and peace, and others who adhere, or have adhered to the said Scots against us, and with them were enemies against us, and who are willing to come

to our faith and peace, and whom he shall see fit to be admitted to our faith and peace; and in our name to make letters of pardon of such adhering and enmity, and also of such admission to our peace, to those men for their security in this behalf to be accounted firm and free whatsoever the said Anthony shall do in our name in the premisses. In witness, &c. Witness, &c.

C There is another grant made unto one of the custody of a castle, and the ammunition therein, for what time it shall please the king, and a writ thereupon directed to him who had the custody thereof before, to deliver to him the castle, and the implements and things appertaining to the same.

And you may see there the patents made to sheriffs to be sheriffs to the counties, and also the patents made to the escheators of the counties, and also the writs to the old sheriffs and escheators to deliver unto them the rolls and writs, &c.

D And letters patent of attendants unto archbishops, abbots, and all others, to be attendants unto them in those things which appertain to their office; the form of nomination to be made by the king to an abbey, of one to be vicar, and that the abbot present him over to the ordinary; and also the form of revocation made by the king of that nomination; and also the form of the writ which the king sends to the ordinary to admit of that revocation, and to admit another person by another nomination. All these appear in the Register, fol. 302.

And divers other presentations made by the king, and also revocations of his presentation; and also nominations made by the king in his own right, or in the right of others, are there in the Register; and grants made by the king of donatives, and the writs directed unto the sheriff to put them in possession; and writs there to the ordinary, to assign unto a prebendary *a stall in the choir, and a place in the chapter*, who hath the prebend by the king's collation; and divers ratifications there made by the king to divers incumbents of churches, or prebends, which they have in possession as incumbents, &c.

And

And many forms of writs made to abbots or bishops, to have yearly pensions for his chaplains, until they are promoted to benefices: and the writ to the chancellor to present in the king's name such a one, the king's chaplain, to the first avoidance of any benefice which shall be void, which appertains to the king; and also grants by the king to receive a yearly pension out of the exchequer.

And divers forms of writs of proxy are in the Register, E to sue, defend or answer, &c. or to resign a benefice, &c.

And the form of the resignation, &c. and the form to F make protestation when a man will resign his benefice, &c. appear in the end of the Register, in fol. 302. and in other folios there following.

*And so endeth this present Treatise, called, New Natura Bre-
vium, which book fully declares the natures of the original writs
contained and expressed in the Register.*

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